

Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. Roberson

C-1-02-479
5/7/2004

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

JEFFERSON-PILOT INSURANCE COMPANY,)
)
Plaintiff,)
)
vs.) CASE NO.
) C-1-02-479
CHRISTOPHER L. KEARNEY,) (Judge Spiegel)
)
Defendant.)

COPY

The deposition upon oral examination of JOHN L.
ROBERSON, being taken pursuant to Order and in accordance
with the Federal Rules of Civil Procedure before Rebecca J.
Huddy, Notary Public, at the Marriott, 304 North Greene
Street, Greensboro, North Carolina, on the 7th day of May,
2004, beginning at 8:40 a.m.

Reported By: Rebecca J. Huddy

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APPEARANCES:

For the Plaintiff: Mr. William R. Ellis
Wood & Lamping, LLP
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Cincinnati, Ohio 45202

Ms. Stephanie Farabow
Jefferson-Pilot Life Insurance Company
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Greensboro, North Carolina 27401

For the Defendant: Mr. Michael A. Roberts
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Cincinnati, Ohio 45202

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- 1 A. Yes.
- 2 Q. Okay. How long have you been in retirement?
- 3 A. Seven years.
- 4 Q. Do you know when it was that you last worked, day,
- 5 month?
- 6 A. March 31, 1997.
- 7 Q. Okay. Do you know whether or not you had
- 8 responsibility for Mr. Kearney's claim through the
- 9 date of your retirement?
- 10 A. Yes.
- 11 Q. Did you supervise someone that had a more principal
- 12 role in administering his claim?
- 13 A. Yes.
- 14 Q. Okay. Someone reported up to you?
- 15 A. Yes.
- 16 Q. Okay. I'm sure you've given a deposition before, I
- 17 suspect you have. You need for me to finish my
- 18 question before you give an answer even if you know
- 19 where I'm going, okay?
- 20 A. Okay.
- 21 Q. Okay. Who was it that reported up to you and had
- 22 primary responsibility for Mr. Kearney's claim prior
- 23 to your retirement?
- 24 A. There would have been several persons: Phyllis
- 25 Harden, Bob Maxwell, and Harold Shelton.

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- 1 The witness, JOHN L. ROBERSON, being first
- 2 duly sworn, was examined and testified as follows:
- 3
- 4 EXAMINATION (by Mr. Roberts):
- 5
- 6 Q. Mr. Roberson, we just met briefly. We're here in
- 7 Greensboro, North Carolina, to take your deposition.
- 8 Could you please tell the jury your name and
- 9 home address, please.
- 10 A. My name is John L. Roberson. I reside at 3816 Kirby
- 11 Drive, Greensboro, North Carolina. I go by the
- 12 initials JL.
- 13 Q. How would you like for me to refer to you, sir?
- 14 A. JL.
- 15 Q. Okay. I feel uncomfortable doing that.
- 16 A. Pardon?
- 17 Q. You're too much my senior for me to feel comfortable
- 18 calling you by your first name. I'll call you Mr.
- 19 Roberson.
- 20 Mr. Roberson, you've been called to give
- 21 testimony here today because you've had some
- 22 experience administering a claim for disability filed
- 23 by Chris Kearney; isn't that right?
- 24 A. That's correct.
- 25 Q. Okay. Are you presently retired, sir?

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- 1 (Mr. Kearney entered the hearing room.)
- 2 Q. Could you help me understand the chain of command or
- 3 hierarchy between the four of you during the '93-'97
- 4 time frame.
- 5 A. Phyllis and Bob were claims analysts. Harold Shelton
- 6 was the manager of the Claims area.
- 7 Q. How many Jefferson-Pilot Life Insurance Company claims
- 8 analysts were there during the last five years of your
- 9 employment?
- 10 A. In what division are you talking about?
- 11 Q. What are the divisions?
- 12 A. Well, there was the Life divisions -- I have no idea
- 13 how many were there. In the Individual Health
- 14 Insurance Division, there would have been three
- 15 analysts.
- 16 Q. Is that the division that Ms. Harden and Mr. Maxwell
- 17 were in?
- 18 A. Yes.
- 19 Q. Okay. Who would have been the third analyst?
- 20 A. Kim Brann.
- 21 Q. When you retired, were all three of those analysts
- 22 still employed at Jefferson-Pilot?
- 23 A. No. Bob Maxwell was retired.
- 24 Q. He'd retired prior --
- 25 A. He retired prior to me on disability.

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<p>1 Q. Okay. Did he have a disability policy with</p> <p>2 Jefferson-Pilot?</p> <p>3 A. How would I know?</p> <p>4 Q. He filed a claim and it came under your hierarchy.</p> <p>5 A. No, it would not have.</p> <p>6 Q. All right.</p> <p>7 A. If he had disability with us, it would have been with</p> <p>8 the Group Division. I had no responsibility for that.</p> <p>9 Q. Okay. Very well. Were Kim Brann and Ms. Harden still</p> <p>10 employed with Jefferson-Pilot when you retired?</p> <p>11 A. Ms. Harden was. Kim Brann is no longer with the</p> <p>12 company and when she left, I don't recall.</p> <p>13 Q. Did she leave prior to you or subsequently?</p> <p>14 A. I don't recall.</p> <p>15 Q. How do you know she left?</p> <p>16 A. She wrote me a note and told me that she was working</p> <p>17 with another company.</p> <p>18 Q. Do you know where?</p> <p>19 A. Yes.</p> <p>20 Q. Where?</p> <p>21 A. The Center for Creative Leadership.</p> <p>22 Q. Do you know where that is located?</p> <p>23 A. It's in Greensboro, North Carolina.</p> <p>24 Q. When was the last time you spoke to her?</p> <p>25 A. I can't recall.</p>	<p>1 Issue persons who reported to you.</p> <p>2 A. Entered the information from the application into our</p> <p>3 computer system and physically issued the policy and</p> <p>4 mailed it when it was approved.</p> <p>5 Q. Okay. So they take information of potential or</p> <p>6 prospective policyholders and if those persons choose</p> <p>7 to purchase a policy, they handle the mechanics of</p> <p>8 that; is that right?</p> <p>9 A. Do you want to state that again. I'm not sure I</p> <p>10 understood.</p> <p>11 Q. Do I understand correctly that the persons who work in</p> <p>12 the Policy Issue Department or Division or Group that</p> <p>13 reported to you would intake the data of a prospective</p> <p>14 policyholder who desired to purchase a policy and they</p> <p>15 would perform the mechanics to accomplish that?</p> <p>16 A. Generally, yes.</p> <p>17 Q. Okay. Did they have any responsibility for actually</p> <p>18 drafting, creating, or authoring the actual policy or</p> <p>19 policies or riders?</p> <p>20 A. No.</p> <p>21 Q. Where was that function performed when you were</p> <p>22 working at Jefferson-Pilot?</p> <p>23 A. Do you want to go over that again.</p> <p>24 MR. ROBERTS: Could you read him the question</p> <p>25 again.</p>
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<p>1 Q. Would it have been several years ago?</p> <p>2 A. At least.</p> <p>3 Q. At least several years ago? Was Mr. Maxwell replaced</p> <p>4 when he went out on disability?</p> <p>5 A. No.</p> <p>6 Q. So when you retired, there were just two claims</p> <p>7 analysts in the department?</p> <p>8 A. As far as I recall, yes.</p> <p>9 Q. And Mr. Shelton was their supervisor and he reported</p> <p>10 to you?</p> <p>11 A. That's correct.</p> <p>12 Q. And did anybody else report to you directly?</p> <p>13 A. Yes. I had the responsibilities for underwriting,</p> <p>14 policy issue, policy service and claims, and there</p> <p>15 would have been several underwriters reporting to me,</p> <p>16 supervisor of policy service in addition to the Claims</p> <p>17 area.</p> <p>18 Q. But the only claims personnel that reported to you are</p> <p>19 Mr. Shelton and Mr. Maxwell, Ms. Harden and Ms. Brann?</p> <p>20 A. That's correct.</p> <p>21 Q. What does underwriting policy issue mean?</p> <p>22 A. Underwriting and policy issue. Underwriting is the</p> <p>23 process of approving a rating of applicants. Policy</p> <p>24 issue is the issue of a policy.</p> <p>25 Q. Tell me about the functions performed by the Policy</p>	<p>1 (The last question was read back by the court</p> <p>2 reporter.)</p> <p>3 A. Primarily in the Actuarial Department.</p> <p>4 Q. How long did you work at Jefferson-Pilot?</p> <p>5 A. Thirty-eight and a half years.</p> <p>6 Q. Did you ever have any responsibility or role in the</p> <p>7 Actuarial Department?</p> <p>8 A. No.</p> <p>9 Q. Do you know anything about how policies are created or</p> <p>10 were created by Jefferson-Pilot during your tenure?</p> <p>11 A. Do you want to state that again.</p> <p>12 Q. Do you know anything about how policies were created</p> <p>13 at Jefferson-Pilot during your 38 and a half years</p> <p>14 there?</p> <p>15 A. Disability policies, yes.</p> <p>16 Q. Okay. What can you tell me about what you know about</p> <p>17 the creation of disability policies?</p> <p>18 A. What do you want to know about it?</p> <p>19 Q. Educate me about the process, what you can recall,</p> <p>20 start to finish in the creation of a disability</p> <p>21 policy.</p> <p>22 A. Well, the ideas generally came from the Marketing</p> <p>23 Department. It was discussed with the Underwriting</p> <p>24 Department and the Actuarial Department. The decision</p> <p>25 was made for the type of benefits to be placed in the</p>

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<p style="text-align: right;">Page 10</p> <p>1 policy. The Actuarial Department wrote the policies, 2 rated them. They were reviewed by myself and the 3 Marketing Departments, agreed upon, printed, filed 4 with the Insurance Departments, and then marketed. 5 Q. Thank you. What was your role in -- you mentioned 6 that you would have to review and agree upon them with 7 the Marketing Department. What exactly was your role 8 or responsibility in that process you just laid out 9 for me? 10 A. I would have reviewed the policies' wording for my 11 opinion on if they were worded correctly or in 12 accordance with my knowledge of disability income 13 insurance. 14 Q. Who else would perform a similar function to you, and 15 not necessarily names of the individuals but, you 16 know, the capacities? Would the Marketing Department 17 also evaluate the actual language and provide input in 18 the language to be used? 19 A. They would suggest language or provisions that were 20 compatible with the competition, yes. 21 Q. And the Actuarial Department would draft language as 22 well and comment on language used in a disability 23 policy? 24 A. I didn't understand you. 25 Q. The Actuarial Department would also offer language to</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. Okay. Why would there be so many different disability 2 insurance policies created? 3 A. Well, in 38 and a half years the industry changed 4 considerably. 5 Q. Okay. Was Jefferson-Pilot out of the industry of 6 selling disability insurance policies when you 7 retired? 8 A. Yes. 9 Q. Do you know why it is that they ceased engaging in 10 that business line? 11 A. It was a management decision. 12 Q. Is it one you agreed with? 13 A. Yes. 14 Q. Why? 15 A. The disability income field is a very difficult line 16 of business and it's highly specialized and unless you 17 were willing to commit the resources, it would be 18 difficult to have a viable line, and it was highly 19 competitive and one of the very minor parts of the 20 Jefferson-Pilot organization, so I thought it was a 21 good decision. 22 Q. Was it profitable for Jefferson-Pilot prior to ceasing 23 the business line? 24 A. Yes. 25 Q. Did there ever come an occasion where a policy was</p>
<p style="text-align: right;">Page 11</p> <p>1 be used in a proposed disability insurance policy? 2 A. Yes, and the Legal Department would be involved also, 3 yes. 4 Q. Legal Department? Anyone else? 5 A. I can't think of anyone else. 6 Q. So would there be an initial draft of a policy that 7 would be shared with these respective departments and 8 the person who sent that proposal or draft of a policy 9 out would be asking for comments from the different 10 areas of the company? 11 A. Yes. 12 Q. And then people would provide their comments and 13 ultimately through a series of drafts, you'd come to a 14 final draft that would be approved and that's what 15 would be sent to the State Insurance Department? 16 A. That's correct. 17 Q. And would the same process apply for riders? 18 A. Do you mean benefit riders? 19 Q. Correct. 20 A. Yes, yes. 21 Q. During your tenure how many disability insurance 22 policies were ultimately created? 23 A. I have no idea. I couldn't tell you exactly. 24 Q. Dozens? 25 A. At least.</p>	<p style="text-align: right;">Page 13</p> <p>1 created, filed with the State Insurance Department, 2 accepted by the State Insurance Department and then 3 sold to the public, and then after those sequence of 4 events occurred, the company decided to tweak the 5 language of the policy, modify it at all? 6 A. Only if we came out with a new policy would there be 7 changes in benefits, didn't tweak the policies that 8 were already out there, no. 9 Q. Well, once you sell the policy, you can't change it; 10 that's a contract that you can't just go out and 11 change, but did the company ever issue policies -- are 12 you mindful that the company used -- strike that, 13 start over. Are you mindful that the company used 14 letters and numbers to identify different versions of 15 policies? 16 A. Yes. 17 Q. Okay. Did there ever come an occasion where the 18 company stopped selling the XYZ policy and started 19 selling the TUV policy? 20 A. Yes. 21 Q. What would drive that kind of decision? 22 A. Primarily change in the marketplace, new product 23 innovations. 24 Q. Was it ever identified that there was problems with 25 the language of a policy and therefore the policy</p>

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<p>1 was -- sale was discontinued?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Were policies that were sold ever discontinued from</p> <p>4 being sold?</p> <p>5 A. Yes.</p> <p>6 Q. And were they replaced by new policies?</p> <p>7 A. Well, what do you mean by were they replaced by new</p> <p>8 policies, those that had been issued or for marketing</p> <p>9 purposes?</p> <p>10 Q. What does that mean, those that had been issued or for</p> <p>11 marketing purposes?</p> <p>12 A. Well, you said to replace a policy.</p> <p>13 Q. Right.</p> <p>14 A. I mean, I didn't understand what you meant by replace</p> <p>15 it.</p> <p>16 Q. Did it ever come to be that the company decided, We're</p> <p>17 going to stop selling policy A, we're going to start</p> <p>18 selling policy B?</p> <p>19 A. Yes.</p> <p>20 Q. Did there come a point in time when the company said,</p> <p>21 We're going to stop offering benefits rider for COLA,</p> <p>22 that person we're going to offer a new version for</p> <p>23 future policy sales? COLA is just an example.</p> <p>24 A. Yes, uh-huh.</p> <p>25 Q. That happened? Do you recall the company in the early</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Was that commonly known within Jefferson-Pilot</p> <p>3 while you were there?</p> <p>4 A. I can only speak for myself.</p> <p>5 Q. Okay. Did you ever discuss that concept with anybody</p> <p>6 while you were at Jefferson-Pilot?</p> <p>7 A. I don't specifically recall specifically doing it, no.</p> <p>8 Q. Did you meet with Mr. Ellis last night?</p> <p>9 A. Yes.</p> <p>10 Q. Did you discuss your deposition today?</p> <p>11 A. That I was going to give one, yes.</p> <p>12 Q. And did you discuss -- did he talk with you about the</p> <p>13 actual policy document that is Mr. Kearney's policy?</p> <p>14 A. I think we discussed the policy provisions, yes.</p> <p>15 Q. And he pointed out the provisions to you while you</p> <p>16 were sitting having dinner or drinks?</p> <p>17 A. He may have asked me about my opinion about some</p> <p>18 provisions, yes.</p> <p>19 Q. Did he direct your attention to certain portions of</p> <p>20 the policy?</p> <p>21 A. We certainly didn't discuss every provision there, no.</p> <p>22 Q. But he directed your attention to certain sections of</p> <p>23 the policy he wished to discuss with you?</p> <p>24 A. Yeah.</p> <p>25 Q. And he also shared with you the pay history on Mr.</p>
Page 15	Page 17
<p>1 '90s creating a new version of a residual disability</p> <p>2 rider to sell and discontinuing the use of an old</p> <p>3 form?</p> <p>4 A. I don't remember the date, but it was done, yes.</p> <p>5 Q. Okay. Do you recall why that decision was made to do</p> <p>6 that?</p> <p>7 A. Most likely due to competitive reasons and</p> <p>8 marketplace.</p> <p>9 Q. Are you speculating or do you know factually?</p> <p>10 A. I'm speculating.</p> <p>11 Q. Okay. Was it to improve upon the language of the</p> <p>12 rider?</p> <p>13 A. No.</p> <p>14 Q. Did anyone ever advise you that a policy that was out</p> <p>15 for sale in the marketplace needed to be discontinued</p> <p>16 because it was ambiguous?</p> <p>17 A. No.</p> <p>18 Q. Are you mindful of the way courts read insurance</p> <p>19 policies in construing ambiguities?</p> <p>20 A. Yes.</p> <p>21 Q. What's your understanding?</p> <p>22 A. Courts have interpreted language differently in</p> <p>23 various jurisdictions, if that's what you mean.</p> <p>24 Q. No. Are you mindful that courts construe ambiguities</p> <p>25 against the drafter of the insurance policy?</p>	<p>1 Kearney's claim?</p> <p>2 A. No.</p> <p>3 Q. That was a document that you two discussed, wasn't it?</p> <p>4 A. Last night is what you were asking, wasn't it?</p> <p>5 Q. Yes.</p> <p>6 A. No.</p> <p>7 Q. Wasn't that on the table right in front of you as you</p> <p>8 were drinking?</p> <p>9 A. I don't recall everything that was on the table.</p> <p>10 Q. Okay. Are you mindful that insurance agents in the</p> <p>11 field would provide prospective policyholders with</p> <p>12 proposals?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who authored the proposals that those</p> <p>15 folks shared with prospects?</p> <p>16 A. I don't recall.</p> <p>17 Q. Were they authored within Jefferson-Pilot or were</p> <p>18 agents out in the field creating whatever they wanted</p> <p>19 to create for a proposal?</p> <p>20 A. Basically it came from Jefferson-Pilot.</p> <p>21 Q. Do you know what department created those proposals?</p> <p>22 A. It was out of the Marketing Department, I think.</p> <p>23 Q. The same department that comments on policy language</p> <p>24 before a policy is issued?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 18</p> <p>1 Q. The people who create those proposals, are they 2 mindful of the actual provisions of policies? 3 A. Yes. 4 Q. And does Jefferson-Pilot train its marketing folks and 5 claims analyst folks about how the policies that are 6 issued are interpreted? 7 A. (No response) 8 Q. There's a long pause in your answer. Is there a 9 reason for that? Did you understand the question? 10 A. I didn't fully understand it, no. Do you want to -- 11 Q. Okay. To me it could go one way or the other. You 12 have a company with a whole bunch of employees, the 13 company sells policies, and either you leave it up to 14 everybody to come to their own understanding of what 15 the policy means -- and hopefully it's the same 16 understanding -- or the company gives direction or 17 provides some education about what the policy says. 18 Which one of those was it at Jefferson-Pilot? 19 A. We would review new policies with the claims analysts 20 and with the underwriting personnel. 21 Q. Who is we? 22 A. Myself primarily for our department. 23 Q. So who would -- for the marketing folks who prepare 24 these proposals, did they obtain any training or 25 education about what the actual policies provide, or</p>	<p style="text-align: right;">Page 20</p> <p>1 policy provides? 2 A. I don't recall one. 3 Q. Are you mindful of a proposal ever having to be 4 scrapped because it was wrong and a new template of a 5 proposal was created for distribution to the agents in 6 the field? 7 A. Not that I recall. 8 Q. Do you receive any retirement income from 9 Jefferson-Pilot? 10 A. Yes. 11 Q. Still today? 12 A. Yes. 13 Q. Have you ever spoken to anyone at Disability 14 Management Services? 15 A. No. 16 Q. Do you know what company that is that I refer to? 17 A. No. 18 Q. Are you mindful from speaking to counsel or anyone 19 else that they were engaged to administer claims on 20 behalf of Jefferson-Pilot? 21 A. I was advised of that, yes. 22 Q. Okay. But you've never spoken to anybody there? 23 A. No. 24 Q. And you're not aware of them being engaged to assist 25 in the administration of any claims prior to your</p>
<p style="text-align: right;">Page 19</p> <p>1 if a new marketing person was hired on a given day, to 2 create a proposal, was he or she just supposed to come 3 up with their own understanding of what the policy 4 means? 5 A. Proposals were standardized. I think they were on 6 some type disk. I don't remember, fully remember the 7 process. 8 Q. So the head of the Marketing Department with input 9 from someone in Actuarial and Legal would create the 10 proposal? 11 A. I think that's correct. 12 Q. Okay. The company just didn't leave to each 13 employee's own determination what the policy says or 14 means; the company provided education and training to 15 its employees about what the policies say or provide, 16 right? 17 A. Correct. 18 Q. Okay. And based on that education and training and 19 input from other departments, the persons responsible 20 for developing the proposals would create those 21 proposals, and I guess you suggested there was some 22 kind of template form of a proposal that was blessed 23 by the company; is that right? 24 A. Yes. 25 Q. Did you ever see a proposal that misstated what the</p>	<p style="text-align: right;">Page 21</p> <p>1 retirement? 2 A. They were not, I can tell you that, no. 3 Q. Okay. Do you know when it was that Jefferson-Pilot 4 made the business decision to stop selling disability 5 insurance policies? 6 A. Well, the line was discontinued I think July 1, 1996, 7 and the decision would have been made sometime prior 8 to that. As I said before, it's a management 9 decision, or I should say it was a management 10 decision, not is a management. 11 Q. Was Clyde Honaker employed by the company when you 12 retired? 13 A. I don't recall. 14 Q. He was an employee of the company at some point, 15 though, right? 16 A. He was with Kentucky Central, who was purchased by 17 Jefferson-Pilot. He subsequently came to Greensboro 18 to head up the Ordinary Claims Department. I only met 19 Clyde for a short period after I retired, so I don't 20 recall when he came here. 21 Q. He arrived in Greensboro after you retired; is that 22 what you're saying? 23 A. As far as I know. 24 Q. Okay. What's ordinary claims refer to? What's that 25 nomenclature mean?</p>

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<p>1 A. Life insurance claims primarily.</p> <p>2 Q. Is disability in there, too?</p> <p>3 A. It wasn't when I was there, no.</p> <p>4 Q. Okay. Did Paul Swink work at Jefferson-Pilot while</p> <p>5 you were there?</p> <p>6 A. Yes.</p> <p>7 Q. What was his role?</p> <p>8 A. He was in the Ordinary Claims Department.</p> <p>9 Q. In what capacity?</p> <p>10 A. I don't recall.</p> <p>11 Q. What type of training did Jefferson-Pilot provide to</p> <p>12 its claims analysts?</p> <p>13 A. Well, we had one-on-one training, one-on-one training</p> <p>14 with experienced analysts, if you're talking about a</p> <p>15 new analyst coming in. They were encouraged to enroll</p> <p>16 in the International Claims Association program which</p> <p>17 had three separate books, I think it was, and if you</p> <p>18 completed that course, you received a designation of</p> <p>19 International Health Claims Associate or something to</p> <p>20 that decree, and also they were encouraged to enroll</p> <p>21 in LOMA, Life Office Management Association courses.</p> <p>22 Basically that was it. Now, that's the claims people</p> <p>23 that I had responsibility for. The others I can't</p> <p>24 attest to.</p> <p>25 Q. Did they maintain at their desk or office any kind of</p>	<p>1 opportunity to actually look at some historical</p> <p>2 documents?</p> <p>3 A. When I had the opportunity to look at some documents.</p> <p>4 Q. Okay. What documents did you look at?</p> <p>5 A. Some parts of the claim file, the actual claim file</p> <p>6 itself --</p> <p>7 Q. You were given the entire claims file to review?</p> <p>8 A. No, I don't think I was, no.</p> <p>9 Q. Okay. Do you recall what documents that are in the</p> <p>10 claim file that you did -- were given to review?</p> <p>11 A. I looked at a claims worksheet which had benefit</p> <p>12 payments. I looked at one or two of the actual proofs</p> <p>13 of loss that were submitted. I did not review the</p> <p>14 whole claim file.</p> <p>15 Q. Okay. We've discussed earlier that you had the</p> <p>16 opportunity to review at least sections of the actual</p> <p>17 policy?</p> <p>18 A. Yes.</p> <p>19 Q. That policy bears the designation WJ576A. Are you</p> <p>20 mindful of that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Do those numbers and letters have any meaning?</p> <p>23 Did WJ stand for anything?</p> <p>24 A. WJ was the form number assigned to the Individual</p> <p>25 Health Insurance Division, like W was the initial of</p>
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<p>1 booklets or handouts or memos about the process of</p> <p>2 handling claims, disability claims?</p> <p>3 A. At one time there was a memo about processing claims</p> <p>4 that was developed back when we were Pilot Life</p> <p>5 Insurance Company. I don't recall specifically what</p> <p>6 was in it.</p> <p>7 Q. What time frame was that?</p> <p>8 A. Probably goes back 25 years.</p> <p>9 Q. Okay. Prior to, say, the past three weeks, when was</p> <p>10 the last time you spoke with anyone about Chris</p> <p>11 Kearney or Chris Kearney's claim?</p> <p>12 A. Not since I was retired. I don't recall specifically</p> <p>13 talking about it.</p> <p>14 Q. Sometime prior to your retirement?</p> <p>15 A. Yes.</p> <p>16 Q. So sometime prior to your retirement you had</p> <p>17 discussions about Chris Kearney, but then you retired</p> <p>18 and it wasn't until these past two or three weeks, and</p> <p>19 we're in May of 2004; is that right?</p> <p>20 A. Let's make it the last two or three days.</p> <p>21 Q. Okay. Do you have any independent recollection of the</p> <p>22 handling of Mr. Kearney's claim?</p> <p>23 A. Yes, once it was brought to my attention, I recalled</p> <p>24 some of it, yes.</p> <p>25 Q. When someone mentioned his name or when you had the</p>	<p>1 the individual health and then the J was added after</p> <p>2 the merger between the two companies.</p> <p>3 Q. Okay. The merger between the two companies, you're</p> <p>4 talking about the Kentucky company?</p> <p>5 A. No, I'm talking about Jefferson Standard Life</p> <p>6 Insurance Company and Pilot Life Insurance Company.</p> <p>7 Q. Okay. When did that take place?</p> <p>8 A. I can't -- I don't remember the specific day.</p> <p>9 Q. Was it during your tenure?</p> <p>10 A. Yes.</p> <p>11 Q. Was it in the '70s or --</p> <p>12 A. Oh, no. It was maybe 1987.</p> <p>13 Q. Okay.</p> <p>14 A. Perhaps, in that area.</p> <p>15 Q. Okay. So would the WJ576A policy have been created</p> <p>16 post merger of Jefferson and Pilot, since it has those</p> <p>17 two letters on it?</p> <p>18 A. I don't recall.</p> <p>19 Q. Okay. Do you know whether that particular policy was</p> <p>20 something that Jefferson-Pilot had success in selling,</p> <p>21 question mark?</p> <p>22 A. Depends on what you mean by success.</p> <p>23 Q. Were there a lot of those form policies sold?</p> <p>24 A. I can't tell you how many. It was the prime</p> <p>25 non-cancellable disability policy for some time. I</p>

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<p align="right">Page 26</p> <p>1 don't remember how many policies. Unfortunately I</p> <p>2 don't have those figures in my head.</p> <p>3 Q. Okay. When you say it was the prime non-cancellable</p> <p>4 disability insurance policy for some time, meaning it</p> <p>5 was something that you sold -- something that the</p> <p>6 agents, whoever is in the field selling them, sold</p> <p>7 more of than other of the disability insurance</p> <p>8 policies that could be purchased from Jefferson-Pilot;</p> <p>9 is that it?</p> <p>10 A. Probably, yes.</p> <p>11 Q. Okay. And would it also be true to say that it's one</p> <p>12 that was administered by your department more than</p> <p>13 other disability insurance policies that were sold by</p> <p>14 Jefferson-Pilot?</p> <p>15 A. No, it wouldn't be true to say that.</p> <p>16 Q. Okay. There were other disability insurance policies</p> <p>17 on which claims were made more frequently than this</p> <p>18 particular version?</p> <p>19 A. Yes.</p> <p>20 Q. How many others were claims more frequently made</p> <p>21 under?</p> <p>22 A. I can't tell you specifically. I know that we had a</p> <p>23 franchise policy, disability policy which was sold on</p> <p>24 a payroll deduction basis. The volume of policies and</p> <p>25 claims far exceeded any other policy that we had.</p>	<p align="right">Page 28</p> <p>1 this WJ576A have been the most reviewed policy by your</p> <p>2 department because of the volume of claims being made</p> <p>3 under it?</p> <p>4 A. I don't recall.</p> <p>5 Q. Well, Mr. Kearney's claim wasn't the only claim made</p> <p>6 under that policy?</p> <p>7 A. No.</p> <p>8 Q. Okay. There were hundreds of claims made under that</p> <p>9 policy?</p> <p>10 A. I said I didn't know the volume, so I can't say there</p> <p>11 were hundreds. I don't know how many. I just don't</p> <p>12 recall.</p> <p>13 Q. Okay. You can't approximate for me whether it's more</p> <p>14 than a hundred or less than a hundred claims were made</p> <p>15 under that policy?</p> <p>16 A. On that specific policy, I can't speculate on that.</p> <p>17 That's been a long time.</p> <p>18 Q. It has been. Were you advised in the past week that</p> <p>19 the company now asserts that it made a mistake in the</p> <p>20 way it paid Mr. Kearney?</p> <p>21 A. Yes.</p> <p>22 Q. Did that issue ever come to your attention prior to</p> <p>23 this past week?</p> <p>24 A. No.</p> <p>25 Q. No one ever suggested that to you prior to this past</p>
<p align="right">Page 27</p> <p>1 Q. It was -- there was more sales of those because --</p> <p>2 A. Yes.</p> <p>3 Q. -- they was sold to companies and offered to the</p> <p>4 companies' employees?</p> <p>5 A. Well, it was sold to the employees of the companies on</p> <p>6 a payroll deduction basis, yes.</p> <p>7 Q. Was that covered by ERISA, those policies?</p> <p>8 A. I don't recall. I don't think so. I think ERISA was</p> <p>9 applicable to group insurance where you had the</p> <p>10 contract with the employer as opposed to the</p> <p>11 individual employee.</p> <p>12 Q. Did your department handle ERISA and non-ERISA claims</p> <p>13 or was ERISA handled by a different function in the</p> <p>14 company?</p> <p>15 A. Well, ERISA applied primarily to group insurance. We</p> <p>16 may have had some policies that the employer was</p> <p>17 paying a hundred percent of the premium, which may</p> <p>18 have been subject to ERISA. I don't recall</p> <p>19 specifically. We did have some group conversion</p> <p>20 hospital policies that were considered under ERISA</p> <p>21 because they were a conversion from an ERISA group</p> <p>22 policy.</p> <p>23 Q. So your department did handle some ERISA matters?</p> <p>24 A. Yes.</p> <p>25 Q. Other than those franchise disability policies, would</p>	<p align="right">Page 29</p> <p>1 week?</p> <p>2 A. On Mr. Kearney's claim?</p> <p>3 Q. Yes, sir.</p> <p>4 A. No.</p> <p>5 Q. You said that some of your memory about Mr. Kearney --</p> <p>6 you said that you do have some memory based on being</p> <p>7 refreshed by these documents about Mr. Kearney's</p> <p>8 claim. What can you recall sitting here today about</p> <p>9 the administration of Mr. Kearney's claim?</p> <p>10 A. I'm not sure what you're -- in the administration of</p> <p>11 his claim to what extent?</p> <p>12 Q. You had suggested earlier that you didn't have a</p> <p>13 memory of the claim until you saw some documents and</p> <p>14 then your memory was refreshed; is that --</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. I'd like for you to tell me everything you</p> <p>17 recall from memory about Mr. Kearney's claim.</p> <p>18 A. I recall that it was a difficult claim to administer</p> <p>19 primarily because Mr. Kearney was a self-employed</p> <p>20 manufacturer's representative and in his claim for</p> <p>21 residual disability benefits, it was difficult to</p> <p>22 obtain the verification of prior and current income,</p> <p>23 and that's the extent that I recall.</p> <p>24 Q. Do you recall anything else about the claim from</p> <p>25 memory, not from looking at documents with Mr. Ellis.</p>

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<p>1 A. No.</p> <p>2 Q. Do you recall that when asked, Mr. Kearney would</p> <p>3 immediately provide you with copies of his tax</p> <p>4 returns?</p> <p>5 A. I don't recall that he did, no.</p> <p>6 Q. You don't recall either way?</p> <p>7 A. No.</p> <p>8 Q. Do you recall either way? I asked you a negative</p> <p>9 question, you gave me a negative response, so I want</p> <p>10 to clean it up on the record while we're here. Do you</p> <p>11 recall one way or the other about whether or not Mr.</p> <p>12 Kearney would give you copies of his tax returns when</p> <p>13 he was asked to do so?</p> <p>14 A. I don't recall specifically, no.</p> <p>15 Q. Do you recall whether he gave you the name and address</p> <p>16 and phone number of his accountant when he was asked</p> <p>17 to do so?</p> <p>18 A. I don't recall that either.</p> <p>19 Q. Do you recall whether the company contacted his</p> <p>20 accountant directly to get his financial data?</p> <p>21 A. I don't recall that, no.</p> <p>22 Q. Do you recall whether or not while you were employed</p> <p>23 with the company you or folks in your department</p> <p>24 seeking an independent medical evaluation of Mr.</p> <p>25 Kearney?</p>	<p>1 Q. Are you ready?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. You've had the opportunity to review those ten</p> <p>4 or twelve pages that I've compiled from the claims</p> <p>5 file, and for the record, let me indicate what pages</p> <p>6 we're talking about. This is a series of</p> <p>7 chronological letters from the claim file. The first</p> <p>8 is Bates labeled 2804, then 2796, 2788, 2840, 2821,</p> <p>9 2817, 2818, 2920, 2895, 2896.</p> <p>10 Mr. Roberson, did you frequently get involved</p> <p>11 in writing letters to individual policyholders in your</p> <p>12 capacity as Vice President?</p> <p>13 A. Yes.</p> <p>14 Q. Did I get your capacity correct, you were Vice</p> <p>15 President of the company during the '90s?</p> <p>16 A. Yes.</p> <p>17 Q. Was it a specific title, Vice President blank or --</p> <p>18 A. Vice President of Individual Health Insurance.</p> <p>19 Q. And who did you report to?</p> <p>20 A. I reported to Bill Luper.</p> <p>21 Q. Who was in what capacity?</p> <p>22 A. He was the Senior Vice President of both the Home</p> <p>23 Service Division and the Individual Health Division.</p> <p>24 Q. But you were the senior officer over the disability</p> <p>25 insurance product; is that right?</p>
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<p>1 A. I don't recall specifically, no.</p> <p>2 Q. How about surveiling him?</p> <p>3 A. I don't recall it specifically, no.</p> <p>4 Q. Did your company use surveillance as a tool during</p> <p>5 your employment?</p> <p>6 A. Yes.</p> <p>7 Q. And you would investigate claimants in other ways by</p> <p>8 getting Equifax reports or other -- using other</p> <p>9 investigative tools as well, correct?</p> <p>10 A. Yes.</p> <p>11 MR. ROBERTS: I don't think I have a whole</p> <p>12 bunch more, but why don't we take a couple minute</p> <p>13 break so I can get situated, okay?</p> <p>14 THE WITNESS: Sure.</p> <p>15 (Brief recess)</p> <p>16 (Defendant's Exhibit No. 19 was marked for</p> <p>17 identification by Mr. Roberts.)</p> <p>18 Q. Mr. Roberson, I've gone through the claim file and</p> <p>19 tried to compile those letters that bear your name or</p> <p>20 reference to some degree and I've marked them --</p> <p>21 marked some of them as Exhibit 19. Why don't you take</p> <p>22 a few seconds to familiarize yourself with them and</p> <p>23 then we'll go through them one at a time relatively</p> <p>24 quickly.</p> <p>25 A. (Witness reviews document)</p>	<p>1 A. Yes, but I reported to him.</p> <p>2 Q. Okay. He had other functions of the company reporting</p> <p>3 up to him, didn't he, other than just disability</p> <p>4 insurance claims?</p> <p>5 A. Yes, he had the Home Service Division also.</p> <p>6 Q. Did you believe you had a good handle on the</p> <p>7 disability insurance contract rights given to</p> <p>8 policyholders while you were working at</p> <p>9 Jefferson-Pilot?</p> <p>10 A. I'm not sure I understand what you mean by the</p> <p>11 contract rights.</p> <p>12 Q. Did you feel while you were serving in that capacity</p> <p>13 as Vice President with Claims that you had a good</p> <p>14 understanding of the disability insurance contracts?</p> <p>15 A. Yes.</p> <p>16 Q. Would you review the contracts when making</p> <p>17 determinations or judgments about a particular claim?</p> <p>18 A. If it was necessary.</p> <p>19 Q. Would you review the policy riders as well?</p> <p>20 A. If it was necessary.</p> <p>21 Q. When would it be necessary?</p> <p>22 A. If someone raised a question about a provision, I</p> <p>23 would review it, but generally speaking, I kept in my</p> <p>24 head the provisions of the policies.</p> <p>25 Q. From your 38 years in your role as Vice President, you</p>

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<p align="right">Page 34</p> <p>1 felt you had a fairly good recollection of the policy</p> <p>2 provisions based on memory in your daily work with the</p> <p>3 policies?</p> <p>4 A. Well, I wasn't a Vice President all that time, but</p> <p>5 yes, I had a good knowledge of the policies.</p> <p>6 Q. Okay. How long were you a Vice President?</p> <p>7 A. Well, there are various stages of Vice President. I</p> <p>8 think there was an Assistant Vice President, a</p> <p>9 Second Vice President, then a Vice President. Yeah, I</p> <p>10 don't recall those dates.</p> <p>11 Q. Okay. How long was Mr. Maxwell at the company before</p> <p>12 he was required to leave?</p> <p>13 A. I don't remember specifically, but I'd say in excess</p> <p>14 of 20 years.</p> <p>15 Q. And do you know what portion of that time was in the</p> <p>16 Claims area?</p> <p>17 A. When he was first employed, he worked as an</p> <p>18 underwriter for a period of time, a couple years</p> <p>19 perhaps. Then he moved to the Claims Department and</p> <p>20 stayed there for the remainder of his time.</p> <p>21 Q. Okay. So would he, too, in your judgment, since he</p> <p>22 reported up through you, have a good working knowledge</p> <p>23 of the policies, the disability insurance policies and</p> <p>24 the riders?</p> <p>25 A. In general, yes.</p>	<p align="right">Page 36</p> <p>1 determining that this needs to be paid or this one</p> <p>2 qualifies for payment, before that first check is</p> <p>3 sent, you perform some quality control of the</p> <p>4 decision?</p> <p>5 A. That's correct.</p> <p>6 Q. And the procedure in place is that the claims analyst</p> <p>7 as a first matter reviews the information that's been</p> <p>8 provided from the claimant and whoever else, reviews</p> <p>9 the policy and makes a judgment about the payment and</p> <p>10 the amount?</p> <p>11 A. Well, they review the information that they receive.</p> <p>12 I don't know that they go back and specifically review</p> <p>13 the policy, but they would have general knowledge of</p> <p>14 the policy. But yes, they would do that, determine</p> <p>15 the benefits payable.</p> <p>16 Q. Okay. And then in the initial payment regardless of</p> <p>17 size, it's the procedure that it goes to you for you</p> <p>18 to perform the same review; is that accurate?</p> <p>19 A. I didn't do the in-depth review that the analyst</p> <p>20 would, but yes, I did review and approve the claim.</p> <p>21 Q. You insured on the company's behalf that based on the</p> <p>22 policy provisions that the payment was appropriate?</p> <p>23 A. Tried to, yes.</p> <p>24 Q. Okay. Were you good at your job?</p> <p>25 A. That's a matter of opinion. I thought so, yes.</p>
<p align="right">Page 35</p> <p>1 Q. This first page of Exhibit 19 purports to be a letter</p> <p>2 from Mr. Kearney to you, February 8, 1995, and I think</p> <p>3 that's your handwriting to Bob Maxwell "What is he</p> <p>4 talking about? star."</p> <p>5 A. Right.</p> <p>6 Q. That's your handwriting?</p> <p>7 A. Yes.</p> <p>8 Q. Do you know one way or the other about any dialogue</p> <p>9 you had with anybody on Mr. Kearney's claim prior to</p> <p>10 this date? Do you know whether or not your</p> <p>11 involvement in Mr. Kearney's claim predated February</p> <p>12 of '95 or not? It's not a trick question. I'm not</p> <p>13 going to pull something out that shows it earlier,</p> <p>14 but --</p> <p>15 A. I'll assume I did, yes, because I reviewed all the</p> <p>16 claims that were paid initially and then I reviewed</p> <p>17 all claims that were paid monthly that were over</p> <p>18 certain amounts of money, so yes, I would have seen</p> <p>19 the claim prior to that time, yes.</p> <p>20 Q. Okay. Tell me about that. You said you reviewed all</p> <p>21 claims paid initially. Is that regardless of the</p> <p>22 amount of money being paid out?</p> <p>23 A. I think so, yes.</p> <p>24 Q. So that was just a procedure or protocol in place that</p> <p>25 the claims analysts, when reviewing a claim and</p>	<p align="right">Page 37</p> <p>1 Q. Well, they employed you for 38 years and they're still</p> <p>2 paying you.</p> <p>3 A. I thought so, yes.</p> <p>4 Q. Was Mr. Maxwell good at his job?</p> <p>5 A. Yes.</p> <p>6 Q. Mr. Shelton?</p> <p>7 A. Yes.</p> <p>8 Q. Ms. Harden?</p> <p>9 A. Yes.</p> <p>10 Incidentally, with Mr. Maxwell, I understand</p> <p>11 you're going to depose him, and I'm appalled that you</p> <p>12 would do that to a man who is house-confined. He's</p> <p>13 confined to a chair. He can hardly see. I mean, he</p> <p>14 didn't recognize me when I came in his house last</p> <p>15 night, and he's a sick man. He almost died last year,</p> <p>16 three months in the hospital and -- you know, it's --</p> <p>17 Q. As long as you want to discuss this on the record, I</p> <p>18 can tell you exactly what my conversation was. I</p> <p>19 called his phone number yesterday. I spoke to his</p> <p>20 wife, who's name is Mary, as you probably know. I</p> <p>21 said, Mrs. Maxwell, my name is Mike Roberts, I'm a</p> <p>22 lawyer, I'm in Greensboro taking some depositions</p> <p>23 relating to a Jefferson-Pilot matter. I understand</p> <p>24 that your husband is not well and I'm calling to ask</p> <p>25 if it would be an imposition if I spent an hour with</p>

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1 him tomorrow in a deposition, and I understand that if
2 he can't do it for medical reasons, we won't go
3 through with it, but I called to simply ask, and she
4 told me, I don't think there's a problem with that,
5 and then she left the phone for a minute, she came
6 back and said, I spoke to him, he says it's not a
7 problem.
8 So sir, I am not trying to inconvenience
9 anybody you care for. I called. I told her that I
10 don't intend to do it if it's an imposition. He told
11 me it would be okay.
12 A. She told --
13 Q. I know nothing about his medical condition. I don't
14 know anything about him. But I called and said, I'll
15 do it if it's not an imposition, I won't do it if it
16 is. So I'm basing my decision to take his deposition
17 later today on his confirmation that it would be okay.
18 A. She understood you to be representing Jefferson-Pilot
19 Life Insurance Company and he was doing it as a favor
20 to his company which he was retired to. She did not
21 understand that you were a plaintiff's attorney.
22 Q. Well, I'm not a plaintiff's attorney.
23 A. Well, a --
24 Q. I'm a lawyer, I graduated from the University of Notre
25 Dame, I'm the best lawyer in the state of Ohio.

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1 A. Okay.
2 Q. What difference does it make?
3 A. Okay.
4 Q. I called and asked --
5 A. She would not have agreed to it if she had not known
6 you were --
7 Q. Why not? Why would --
8 A. Because she didn't want to put him through that
9 process.
10 Q. What difference does it make if he can give a
11 deposition whether it's at the request of a lawyer
12 representing a plaintiff or a lawyer representing a
13 defendant? By the way, I'm not a plaintiff's
14 attorney. I'm the defendant in this case.
15 Is there anything else you want to criticize
16 me for about mistreating people?
17 A. I think I've expressed my opinion with regards to
18 Mr. Maxwell, yes.
19 Q. Thank you.
20 And if a payment requires a -- if a monthly
21 payment is over a certain threshold, you have to as a
22 quality control make sure each monthly payment is
23 actually payable, right?
24 A. Yes.
25 Q. And what is the threshold?

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1 A. I don't recall what it was.
2 Q. Mr. Kearney's claim exceeded the threshold?
3 A. Yes.
4 Q. And so every month you determined as a second matter
5 whether or not the payment Mr. Kearney was receiving
6 between 1993 and your retirement was properly payable,
7 right?
8 A. I reviewed the analysts' work. I didn't go back and
9 completely review the whole claim every time, no.
10 Q. Okay. Exhibit 9 is a document you discussed with Mr.
11 Ellis last evening and it is the Disability Claims
12 Worksheets on the two policies Mr. Kearney purchased,
13 correct?
14 A. As I said before, I do not recall having discussed
15 this particular form with Mr. Ellis last night.
16 Q. Well, it was sitting before you. Anyway, your
17 initials run down the left-hand margin, correct?
18 A. That's correct.
19 Q. And you're initialing the propriety of each monthly
20 payment on each of those pages with every initial,
21 correct?
22 A. That's correct.
23 Q. And in addition to your initials, there's the initials
24 of Phyllis Harden and perhaps Mr. Maxwell and Mr.
25 Shelton as well from time to time?

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1 A. That's correct.
2 Q. And so with every -- there was two checks issued every
3 month because he had two policies, right?
4 A. That's correct.
5 Q. So each check or in this case both checks every month
6 were reviewed for propriety of payment by the claims
7 analyst as a first matter and you as a second matter?
8 A. What do you mean by propriety of payment?
9 Q. The appropriateness of the payment.
10 A. Yes.
11 Q. Okay. I'm not sure you answered my question, the
12 second question --
13 A. Okay, because in this particular case we made an error
14 in the payment.
15 Q. Who told you that?
16 A. Who told me that? I can tell by looking at it.
17 Q. Okay.
18 A. I'm familiar with the policy and the riders and the
19 benefits were not payable as we paid them.
20 Q. Okay. Prior to your retirement did you come to that
21 conclusion?
22 A. No.
23 Q. Okay. Prior to -- today is May 7 of 2004. Prior to
24 April 30 of 2004, had you come to that conclusion?
25 A. Today is what?

11 (Pages 38 to 41)

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<p style="text-align: right;">Page 42</p> <p>1 Q. May 7. 2 A. May 7? Prior to April 30? 3 Q. Of 2004? 4 A. No, I wasn't even familiar with this case. I wasn't 5 involved at that time. 6 Q. Okay. So when did the payments begin? 7 A. July of 1993 is the first one. 8 Q. Okay. So from July of '93 -- and you retired in July 9 of '97? 10 A. April of '97. 11 Q. April of '97. So '94, '95, '96, '97. If it was four 12 years, it would be 48 months, so you'd retired three 13 or four months short of four years, right, so 45 14 months, correct? 15 A. Yes, sir. 16 Q. Over the course of 45 months, each month you reviewed 17 and determined that two checks going to Mr. Kearney 18 were proper and appropriate under the facts of his 19 claim, the terms of his policy, and the provisions of 20 his riders, and your testimony today is after meeting 21 with Mr. Ellis last night that you made 90 different 22 mistakes? 23 A. Yes. 24 Q. Okay. You worked at the company for 38 years, you 25 were the Vice President, you were head of the Claims</p>	<p style="text-align: right;">Page 44</p> <p>1 COLA and Social Security Supplement, how did you get 2 it wrong 90 times? 3 A. It was a residual disability claim for which he 4 qualified for the full residual benefit and except for 5 the payment of Social Security and the COLA, the 6 benefits were correct. 7 Q. You didn't answer my question. If you're so mindful 8 of these policies and if it's unambiguous that he's 9 just not entitled to COLA or Social Security, how did 10 you get it wrong for four years on 90 different 11 occasions? 12 A. I don't know how, but we did. 13 Q. Okay. Not only you got it wrong, but your subordinate 14 got it wrong on 90 different occasions, and I'm 15 confused. If the policy language is express, it's 16 unambiguous, there's no doubt about it, he's not 17 entitled to those benefits, how did the two of you get 18 it wrong 180 times over four years? 19 A. We made a mistake. 20 Q. Okay. You made 180 mistakes, right? 21 A. If that's the number of payments, yes. 22 Q. Up to your retirement, and then another 180 mistakes 23 were made after your retirement; you're mindful of 24 that? 25 A. Apparently once it got on the track, it just continued</p>
<p style="text-align: right;">Page 43</p> <p>1 Department, and Mr. Ellis educated you yesterday about 2 your four years of errors? 3 MR. ELLIS: Objection. Go ahead. 4 A. Mr. Ellis did not educate me at all. 5 Q. Okay. I wouldn't suspect he could. So February 8 of 6 1995, this first letter of Exhibit 19, would not have 7 been your first contact with the Kearney claim, 8 correct? 9 A. That's correct. 10 Q. Are you mindful that Mr. Maxwell told Mr. Kearney in 11 1995 that his residual disability benefits were 12 payable for only two years? 13 A. I was after looking at this letter. 14 Q. Is that accurate or was that a misrepresentation by 15 Mr. Maxwell? 16 A. That was a mistake by Mr. Maxwell. 17 Q. It wasn't a misrepresentation, it was a mistake? 18 A. Yes. 19 Q. And you determined it was a mistake because you went 20 back and reviewed the policy and came to that 21 conclusion or did you just know because you have -- 22 you're mindful of the policy provisions? 23 A. I'm mindful of the policy provisions. 24 Q. Okay. Tell me, sir, if the policy expressly and 25 unambiguously did not allow Mr. Kearney to receive</p>	<p style="text-align: right;">Page 45</p> <p>1 running. 2 Q. Well, it didn't get on a track. You reviewed it every 3 month. Your initials appear every single month for 4 four years, right? 5 A. My initials are there, but you don't go back and look 6 at every aspect of the claim every month. You don't 7 have time to do it. 8 Q. Okay. So your company -- has your company ever before 9 made over 300 individual independent mistakes when the 10 language is so unambiguous, anyone could conclude that 11 it's a mistake? Has that ever happened before? 12 A. I don't have any independent knowledge of it 13 happening, but I'm sure that it's possible. 14 Q. 300 mistakes? That's possible? With someone who's 15 worked at the company for 38 years, Vice President? 16 Is that possible when the language is unambiguous? 17 A. Not only is it possible, it apparently happened in 18 this case. 19 Q. Okay. How come you didn't pick it up in four years? 20 If Mr. Ellis can pick it up and share it with you last 21 night, why couldn't you pick it up in four years? 22 MR. ELLIS: Objection. 23 Q. You can answer. 24 A. Here again, Mr. Ellis didn't share that with me last 25 night.</p>

12 (Pages 42 to 45)

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Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. Roberson

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<p align="right">Page 46</p> <p>1 Q. You told him? He put the policy in front of you, the 2 payment history in front of you, and you -- before he 3 says anything else, you told him, Boy, that's a 4 mistake I made 90 different times; is that the way it 5 happened? 6 A. No. 7 Q. Okay. I didn't think so. 8 In this letter of February 8, Mr. Kearney 9 threatens to contact the Ohio Department of Insurance 10 if he doesn't have checks in two days' time, and he 11 got checks in those two days' time, right? 12 A. I assume he did. I don't know. I -- 13 Q. Is the second page, February 14, a letter that you 14 sent to him? 15 A. Yes. 16 Q. Do you ever recall discussing with Mr. Kearney or 17 anyone else the implications that may arise if 18 Jefferson-Pilot spoke to his principals about him 19 suffering from chronic severe depression? 20 MR. ELLIS: I'm sorry, could I hear that 21 back, please. 22 Q. Did you understand the question? 23 A. No, I didn't understand the question, no. 24 (The last question was read back by the court 25 reporter.)</p>	<p align="right">Page 48</p> <p>1 told them what his condition was. 2 Q. You understand that was his concern, though, what I 3 just expressed? 4 A. I don't know what his concern was. 5 Q. He never stated to you that concern? 6 A. No. 7 Q. You recall -- see, before you couldn't recall 8 anything, but now you recall specifically that he 9 never stated that concern to you? 10 A. To the best of my knowledge, he did not. 11 Q. It's in writing. You don't recall that? 12 A. No, I don't recall it, sitting right here, no. 13 Q. You just told me two questions ago, though, you told 14 me affirmatively that he never expressed that to you. 15 Which is it, you do know that he never did it or you 16 have no clue? 17 A. He never expressed to me any concern about us giving 18 his condition to any persons that he represented -- 19 Q. Under oath -- 20 A. -- to the best of my knowledge and belief. 21 Q. Under oath you're testifying that your memory is that 22 he never said that? 23 A. To the best of my knowledge and belief, yes. 24 Q. Okay. Do you recall discussing Mr. Kearney's claim 25 with the people that reported to you?</p>
<p align="right">Page 47</p> <p>1 A. No. 2 Q. Do you know what I mean by the question? 3 A. I'm not sure what you mean by his principals, but -- 4 Q. He was a manufacturer's representative. He was an 5 agent. He had principals. He had companies that paid 6 him money if he sold their product. He was an 7 independent contractor. Did you ever discuss with 8 anyone the negative impact that would occur to his 9 capacity to earn money if his principals were advised 10 by Jefferson-Pilot that he suffered from chronic 11 severe depression? 12 A. No. 13 Q. What's your judgment of what the implications may be 14 of someone learning that some independent contractor 15 agent suffers from chronic severe depression? 16 A. I judge the person on the basis of what they do, not 17 what their physical condition is. As well as I 18 remember, Mr. Kearney refused to give us the names of 19 the companies that he represented. 20 Q. He did for a period of time, you're right, because you 21 wanted to contact them and tell them he had chronic 22 severe depression and he thought he would lose the 23 contract if they knew that. 24 MR. ELLIS: Objection. 25 A. And you're absolutely wrong there. We would not have</p>	<p align="right">Page 49</p> <p>1 A. I don't recall specifically, but I'm sure I did. 2 Q. So there would be communications between you and the 3 people that reported to you that aren't memorialized 4 in a letter? 5 A. That's possible, yes. 6 Q. Third page of Exhibit 19, is that a letter you 7 received from Mr. Kearney? 8 A. Dated March 8, '95? 9 Q. Yeah. 10 A. Yes. 11 Q. Do you know why it was he was copying Charles Melville 12 at Strauss & Troy? 13 A. At this point I don't, no. 14 Q. Did he ever express to you that he was upset about his 15 treatment and he had sought legal counsel at that 16 time? 17 A. What treatment? 18 Q. The treatment he was receiving by Jefferson-Pilot 19 telling him that he only had two years' benefits, 20 among other things? 21 A. He may have, but I don't recall. 22 Q. Page 4, is that a letter that you sent to him and his 23 return of the letter with a comment? 24 A. Yes. 25 Q. May 17, 1996?</p>

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<p style="text-align: right;">Page 50</p> <p>1 A. Yes.</p> <p>2 Q. You then went to the effort of engaging on behalf of</p> <p>3 the company Callaghan & Nawrocki?</p> <p>4 A. That's correct.</p> <p>5 Q. Callaghan & Nawrocki is a CPA firm located in New York</p> <p>6 that specializes in work for disability insurance</p> <p>7 companies; isn't that correct?</p> <p>8 A. I think that's correct.</p> <p>9 Q. You used them on several occasions during your</p> <p>10 employment at Jefferson-Pilot?</p> <p>11 A. I don't recall ever having used them before.</p> <p>12 Q. How do you know that they specialize in disability</p> <p>13 insurance matters?</p> <p>14 A. I was told that by a reinsurer, I believe.</p> <p>15 Q. Okay. Prior to their engagement for Mr. Kearney's</p> <p>16 claim?</p> <p>17 A. Yes.</p> <p>18 Q. Who was the reinsurer that told you that?</p> <p>19 A. It was Employers Reinsurance Corporation.</p> <p>20 Q. Who at Employers Reinsurance would have told you that?</p> <p>21 A. I don't recall.</p> <p>22 Q. Is there any memorialization of your communications</p> <p>23 with Employers Reinsurance that's in the claim file?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Why would you not put that in the claim file?</p>	<p style="text-align: right;">Page 52</p> <p>1 and audit his financial records is not of significance</p> <p>2 to the claimant?</p> <p>3 MR. ELLIS: Objection to form.</p> <p>4 A. He would have been contacted --</p> <p>5 Q. But your communication with Employers Reinsurance</p> <p>6 about initiating that investigation, why is that not</p> <p>7 in the claim file?</p> <p>8 A. I don't recall what type communications. It may have</p> <p>9 been just a general question and I don't recall</p> <p>10 specifically discussing this other than I know that</p> <p>11 from -- we got this name from Employers Reinsurance</p> <p>12 Corporation. It may have been mentioned just in</p> <p>13 general for processing the residual claims of</p> <p>14 independent employees. I don't know that we</p> <p>15 specifically mentioned Mr. Kearney with them or not.</p> <p>16 Q. That's directly contradictory to what you just told me</p> <p>17 five minutes ago. You told me five minutes ago that</p> <p>18 you hired Callaghan & Nawrocki for the first time ever</p> <p>19 on Mr. Kearney's claim at the instruction or on the</p> <p>20 counsel or some contact of Employers Reinsurance.</p> <p>21 MR. ELLIS: Objection.</p> <p>22 Q. Wasn't that your testimony just a few minutes ago,</p> <p>23 sir?</p> <p>24 A. I don't see where that conflicts with what I said here</p> <p>25 in that I may or may not have mentioned his name</p>
<p style="text-align: right;">Page 51</p> <p>1 A. I don't know that it was of any significance.</p> <p>2 Q. Aren't you supposed to document everything you do on a</p> <p>3 claim and put it in the claim file?</p> <p>4 A. Yes.</p> <p>5 Q. Why did you not do that when you spoke to Employers</p> <p>6 Reinsurance about your interest in investigating Mr.</p> <p>7 Kearney through Callaghan & Nawrocki?</p> <p>8 A. I said as far as I know, I don't recall having put</p> <p>9 anything in there, other than we got the letter saying</p> <p>10 that we did it.</p> <p>11 Q. Isn't it as a matter of protocol required that you</p> <p>12 document that type of communication in Mr. Kearney's</p> <p>13 claim file?</p> <p>14 A. Not necessarily, no.</p> <p>15 Q. Why would you not -- why is it not appropriate to</p> <p>16 document communication you had about your desire to</p> <p>17 investigate a claimant? Why is that not appropriate</p> <p>18 for putting in the claim file?</p> <p>19 A. It may be of no significance.</p> <p>20 Q. To whom?</p> <p>21 A. To anybody.</p> <p>22 Q. The fact that a claimant has provided you with his tax</p> <p>23 returns and then you want to have him investigated by</p> <p>24 a firm that specializes on behalf of insurance</p> <p>25 companies in disability matters to investigate further</p>	<p style="text-align: right;">Page 53</p> <p>1 specifically, but yes, that was -- the information</p> <p>2 that they gave us was the reason or -- the reason I</p> <p>3 used them is because they gave me that information on</p> <p>4 this time of claim.</p> <p>5 Q. Who performed the Equifax activities check and why is</p> <p>6 it not in the claim file?</p> <p>7 A. I have no idea.</p> <p>8 Q. You see that you sent him an Equifax activities check?</p> <p>9 I think you're ahead of me, sir. I'm on the November</p> <p>10 15, '96 fax transmittal cover sheet to Ernie Smith.</p> <p>11 A. Now, what's your question again?</p> <p>12 Q. Who obtained the Equifax report?</p> <p>13 A. Who in our office requested it?</p> <p>14 Q. I don't know if it was in your office or some third</p> <p>15 party.</p> <p>16 A. Well, we would have requested it. One of the claims</p> <p>17 analysts would have requested it.</p> <p>18 Q. Why is that not documented in the claim file and why</p> <p>19 is the Equifax report not in the claim file?</p> <p>20 A. I don't know that it's not.</p> <p>21 Q. It's not in the one that was given to me.</p> <p>22 A. I don't know.</p> <p>23 Q. Should it be in there?</p> <p>24 A. Any report that Equifax gave us should be in the claim</p> <p>25 file.</p>

14 (Pages 50 to 53)

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**Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. Roberson**

**C-1-02-479
5/7/2004**

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<p>1 Q. I agree. Let's turn to the next page. It's a letter 2 from you to Mr. Smith at Callaghan & Nawrocki, 3 November 19, 1996, explaining to him about Mr. 4 Kearney's claim, right? 5 A. Right. 6 Q. And let me read the third paragraph and you tell me if 7 I'm reading it correctly. I'll read the second and 8 third paragraph, you tell me after I'm done whether 9 I've read it correctly into the record. 10 "Policy H-493029 was issued effective May 28, 11 1990. The policy provides a basic benefit of \$2,125 12 plus a Social Security Supplement of \$525. It 13 includes a 7 percent cost of living adjustment rider 14 and a residual disability benefit rider. The policy 15 originally excluded back disorders, but this 16 restriction was removed as indicated above. Policy 17 H-538069 was issued effective May 28, 1991 (I 18 erroneously advised 1990). This policy provides a 19 basic benefit of \$1375 with a \$225 Social Security 20 Supplement. It also includes residual disability and 21 a COLA rider. This policy is still in the contestable 22 period. 23 "Disability benefits have been paid since May 24 6, 1993, including the adjustments, we are paying 25 \$5,566.50 currently each month. The initial cause was</p>	<p>1 he's answering the prior letter we just discussed 2 that's undated, right? 3 A. Yes. 4 MR. ROBERTS: For the record, I'm going to 5 append two more pages to that particular exhibit. 6 It's going to be Bates label 2723 and 2791. 7 Q. Sir, I believe those pages we just appended to Exhibit 8 19 bear your handwriting? 9 A. Yes. 10 Q. 2723 is dated November 3 of 1994. You have a 11 reference to Mr. Kearney's two policy numbers and 12 you're writing to Robert Maxwell and you write 13 there -- or is this him writing to you, "Do you agree 14 to begin residual disability 4-1-94?" Is that your 15 writing or his is the question. 16 A. That's Bob Maxwell's writing. 17 Q. And your response is, "Ask for his tax form for '92, 18 '93, also a treatment form"? 19 A. "Statement." 20 Q. "Statement from his accountant"? 21 A. Yes. 22 Q. "On his earnings for '94." Would you have responded 23 to Mr. Maxwell fairly promptly on or after November 3? 24 A. Probably. 25 Q. Do you know when these benefits were ultimately paid</p>
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<p>1 reported as a lumbosacral spine strain and later 2 changed to depression. Total disability benefits were 3 paid from May 6, '93 to April 1, '94. Residual 4 disability has been paid since that date with the last 5 payment covering the period from October 1 to November 6 1, 1996. Based on his reported income, full benefits 7 have been paid," end of paragraph. Did I read that 8 accurately? 9 A. Yes. 10 Q. Are those your words in your letter to Callaghan & 11 Nawrocki, November 19, 1996? 12 A. Yes. 13 Q. And would you have known all those facts off the top 14 of your head or would you have referred to the policy 15 and claim file in order to write this letter? 16 A. I would have referred to the policy and claim file. 17 Q. Thank you. The next page of this, 2920, is undated, 18 but there's a date in the content of the letter that 19 says March 3, 1997, so it's sometime after that, 20 letter from you to Mr. Kearney? 21 A. Yes. 22 Q. The next page is a fax transmittal from Mr. Kearney to 23 you replying to your recent letter, correct? 24 A. Yes. 25 Q. And in this letter which was faxed on March 11 of '97,</p>	<p>1 to Mr. Kearney? 2 A. I don't recall. 3 Q. Do you know if it was a short time later or several 4 months later? 5 A. It was February of '95. 6 Q. Okay. Do you know why it took three more months? 7 A. No, I don't. 8 Q. The next page contains both yours and Mr. Maxwell's 9 handwriting again; is that right? 10 A. That's correct. 11 Q. What does his say above yours? 12 A. It says "JL, no recent" -- something -- "here 13 except" -- I can't make that out, and "Do you see when 14 we overpaid." That's what Bob Maxwell said. 15 Q. What overpayment is he talking about? 16 A. I don't know. 17 Q. Are you mindful that Mr. Kearney was issued two months 18 of benefits in one month and he wrote back and said 19 you overpaid me? 20 A. At that point I don't know. 21 Q. What's your writing say? 22 A. "It appears he is still seeing the psychologist, don't 23 note an overpayment." 24 Q. Don't note an overpayment, what does that mean? 25 A. I didn't notice an overpayment.</p>

15 (Pages 54 to 57)

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<p style="text-align: right;">Page 58</p> <p>1 Q. Did you review the file to see if there was an 2 overpayment in -- is it dated? 3 A. It's March 21 is the date. 4 Q. Okay. So March 21 sometime prior to your retirement 5 did you review the file to see if there was an 6 overpayment? 7 A. Well, obviously there's some basis for my making that 8 statement. I assume I looked at it, yes. 9 Q. Thank you. Was there a David that worked in the 10 Claims Department at Jefferson-Pilot? 11 A. David? 12 Q. Anybody named David? 13 A. No. 14 Q. David Newkirk? 15 A. David Newkirk was with Employers Reinsurance 16 Corporation. 17 Q. Did you correspond with him about Mr. Kearney's file? 18 A. I don't recall. He visited our office occasionally 19 and would review claims that were reinsured, so he 20 could have seen the file. 21 Q. Can I have that exhibit, please. 22 A. (Indicating) 23 (Defendant's Exhibit 20 was marked for 24 identification by Mr. Roberts.) 25 Q. That's Exhibit 20. This is Mr. Kearney's October 31,</p>	<p style="text-align: right;">Page 60</p> <p>1 that he had available, submitted to Mr. Maxwell? 2 A. Yes. 3 Q. Yet his payment wasn't made till -- wasn't made in 4 November, wasn't made in December, wasn't made in 5 January, wasn't made till February of 1995? 6 A. That's correct. 7 Q. Was there that long a delay with the payment of his 8 prior claim? 9 A. Do you have his worksheet? 10 Q. (Indicating) 11 A. I don't know when the initial claim was submitted, but 12 for the period from May 6 to July 6 was made on July 13 22. 14 Q. Is that a standard period of delay when you get a 15 claim, three days later your subordinate says, Should 16 we pay it, and then it's not paid for three months 17 later even though you get the information you seek 18 three weeks later? 19 A. Well, we also asked -- I made a note to ask for a 20 statement from his accountant. I don't believe -- 21 Q. Do you always request statements from accountants 22 before you pay a claimant's claim? 23 A. Not always, but it depends on -- with a self-employed 24 individual, you may request the information from an 25 accountant, yes.</p>
<p style="text-align: right;">Page 59</p> <p>1 '94 Disability Insurance Claim, do you recognize it, 2 Bates labeled 0588 and 0589? 3 A. Yes. 4 Q. This purports to have been executed by Mr. Kearney on 5 October 31, '94. 6 A. That's correct. 7 Q. We saw Mr. Maxwell's November 3, '94 question posed to 8 you. 9 A. I don't recall when it was. 10 Q. Your handwritten note, his handwritten note, the 11 second to the past page of Exhibit 19 (Indicating)? 12 A. Okay. 13 Q. So within two or three or four days of Mr. Kearney 14 submitting the claim, your subordinate asked you if it 15 was okay to pay and it wasn't paid for more than three 16 months later. Do you know why? 17 A. We would have asked for the tax forms and statement 18 from his accountant with regards to his earnings for 19 the years that I mentioned here to establish the 20 amount of benefit payable for the residual disability 21 claim. 22 Q. Let me show you what's been Bates labeled 2719. I 23 used this in a previous deposition, but could you 24 confirm for me that's a letter from Mr. Kearney dated 25 November 29, 1994, submitting to you the tax returns</p>	<p style="text-align: right;">Page 61</p> <p>1 Q. Didn't Mr. Kearney submit to you on November 30 a 2 statement from his accountant containing his earnings 3 for 1994, and that would have just been a partial 4 year. You're still in '94. 5 Let me ask ask another question. Is it the 6 normal course if you get a claim in the middle of the 7 year that you demand an accountant statement for 8 income up to that point of the year before you make a 9 claim payment? 10 A. It depends on the circumstances in the claim. 11 Q. What were the circumstances of this claim that 12 required that you get third-party information from an 13 accountant of partial-year financial numbers before 14 the year end in order to make a first payment on a 15 claim? 16 A. State that again, please, I'm sorry. 17 Q. She can read it to you. 18 (The last question was read back by the court 19 reporter.) 20 A. There again, I think it was the circumstance of the 21 claim, if memory serves me correctly, that it had been 22 almost a year since a claim had been filed after the 23 initial series of payments, and so as much 24 verification of income as we could get would be 25 required to determine our liability.</p>

16 (Pages 58 to 61)

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**Jefferson-Pilot Insurance Company vs. Christopher L. Kearney
John L. Roberson**

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5/7/2004**

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<p>1 Q. Is it normal course to require accounting information</p> <p>2 from a third-party accountant in the middle of the</p> <p>3 year for income during that year before paying a</p> <p>4 claim?</p> <p>5 A. Here again, it depends on circumstances.</p> <p>6 Q. Okay. Let me show you -- this is going to be a later</p> <p>7 exhibit, but I'll show you them now -- Bates number</p> <p>8 2714 and 2707 are letters from Mr. Kearney to Maxwell</p> <p>9 on November 30, '94, and a letter from Mr. Maxwell to</p> <p>10 Mr. Kearney's accountant on December 13 of '94,</p> <p>11 thanking him for information (Indicating).</p> <p>12 A. (Witness reviews document)</p> <p>13 Q. Can you confirm for me that in the November 30 letter</p> <p>14 from Mr. Kearney, he included information from his</p> <p>15 accountant that had been requested?</p> <p>16 A. It states that he does. I haven't seen it.</p> <p>17 Q. Okay. Is there any letter in the claim file that says</p> <p>18 it says something was in your November 30 letter, but</p> <p>19 we never got it?</p> <p>20 A. I don't know, I haven't reviewed the whole file.</p> <p>21 Q. And then the next letter is December 13 from your</p> <p>22 company to Mr. Thielen thanking him for some</p> <p>23 information, right?</p> <p>24 A. Right.</p> <p>25 Q. And requesting more information?</p>	<p>1 Q. Correct.</p> <p>2 A. Yeah. Okay. So your question is why --</p> <p>3 Q. You requested the tax returns, you got them. You</p> <p>4 requested accounting information, you got it. Then</p> <p>5 you made a third request for more accounting</p> <p>6 information and you ultimately got that. But why was</p> <p>7 a check not sent to Mr. Kearney on November 30?</p> <p>8 A. On November 30 we still didn't have all the</p> <p>9 information that we needed for the evaluation of his</p> <p>10 claim. We requested additional information.</p> <p>11 Q. And did you get that information when he threatened to</p> <p>12 take you to the Ohio Insurance Department or did you</p> <p>13 just say we don't need that now because you're going</p> <p>14 to file a claim against us?</p> <p>15 A. Here again, I don't know. I don't have the full file</p> <p>16 there for review. Is it in there? I don't know.</p> <p>17 (Defendant's Exhibit No. 21 was marked for</p> <p>18 identification by Mr. Roberts.)</p> <p>19 Q. Mr. Roberson, I've compiled a series of correspondence</p> <p>20 spanning 1993 to March 1995 and marked it as Exhibit</p> <p>21 21. I'd like to direct your attention to the period</p> <p>22 of time we're talking about here, December 1994,</p> <p>23 November 1994, so beginning with the page that's Bates</p> <p>24 labeled 2720, which is dated November 8 -- beginning</p> <p>25 with the letter dated November 8, 1994, I want to make</p>
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<p>1 A. Yes.</p> <p>2 Q. Why was a benefit payment not made on November 30?</p> <p>3 A. Well, on the basis of the letter of December 13, we</p> <p>4 still felt we needed additional information with</p> <p>5 regards to his income and employment status.</p> <p>6 Q. You didn't make a payment until he threatened to file</p> <p>7 a claim with the Ohio Insurance Department on February</p> <p>8 8, right?</p> <p>9 A. I don't know. Did he? Did he make that?</p> <p>10 Q. Well, you can check -- we saw that letter earlier</p> <p>11 where he threatened -- you remember that, right, in</p> <p>12 your Exhibit 19?</p> <p>13 A. My short-term memory is not as good as my long-term</p> <p>14 memory. (Witness reviews document)</p> <p>15 Okay. What was your question again?</p> <p>16 Q. I asked you why it was that he wasn't paid on November</p> <p>17 3. You said you needed tax returns and some</p> <p>18 accounting information. He gave you the tax returns</p> <p>19 on November 29, he gave you the accounting information</p> <p>20 on November 30, and still there was no payment until</p> <p>21 February 10ish, following his demand that he better</p> <p>22 get paid in four days or else he's going to go to the</p> <p>23 Ohio Insurance Department; isn't that true?</p> <p>24 A. Okay. We did request additional information in the</p> <p>25 meantime, right?</p>	<p>1 sure I understand the sequence of events here.</p> <p>2 Chris Kearney files a claim October 31. Your</p> <p>3 subordinate asks you on November 3 should we pay it.</p> <p>4 November 8, purportedly at your instruction, Maxwell</p> <p>5 sends a letter to Kearney saying we need your '92 and</p> <p>6 '93 returns, including W-2s, and please let us have a</p> <p>7 statement from your accountant telling us your</p> <p>8 earnings during '94. That's the request, right?</p> <p>9 A. That's correct. This was a new claim and we were</p> <p>10 getting that information to determine our liability.</p> <p>11 Q. Okay. But on November 4 your subordinate asks you if</p> <p>12 we should pay it. You tell him no, let's get some</p> <p>13 information. The information requested of Mr. Kearney</p> <p>14 on November 8 is -- are you reading the letter with</p> <p>15 me? -- please let us have a copy of your '92 and '93</p> <p>16 tax returns, including the W-2 forms, and please let</p> <p>17 us have a statement from your accountant telling us</p> <p>18 your earnings during 1994.</p> <p>19 Okay. Then Mr. Kearney sends you a letter on</p> <p>20 November 29, Bates labeled 2719, "Per your request, I</p> <p>21 am enclosing copies of '92 and '93 tax returns and</p> <p>22 W-2s. Also at your request I have enclosed a</p> <p>23 statement from my accountant containing earnings</p> <p>24 during '94."</p> <p>25 Why was the claim not paid -- if Mr. Kearney</p>

17 (Pages 62 to 65)

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<p style="text-align: right;">Page 66</p> <p>1 complied with the November 8 request on November 29, 2 why was the claim not paid on that day? 3 A. Like I said, we also contacted his accountant, didn't 4 we, for additional information? 5 Q. At some point you did, but let's take it step by step 6 here. On November 8 you request three things. On 7 November 29 you get the three things. Why was the 8 claim not paid on November 29? 9 A. We apparently didn't feel like we had enough 10 information at that time to make the payment. 11 Q. He gave you what you requested, but that still wasn't 12 enough, right? 13 A. That's correct. 14 Q. Okay. The next page is a November 30 dated letter 15 from Mr. Kearney's accountant telling you that his 16 earnings for 1994 was \$20,800, right? 17 A. That's correct. 18 Q. Okay. Why is the claim not paid? 19 A. Well, that's an aggregate amount of payment and we 20 need monthly earnings to determine what the benefit 21 is. 22 Q. Can I have that exhibit. 23 A. (Indicating) 24 Q. Thank you. Okay. December 13 letter from Maxwell to 25 Thielen thanking him for the information, this is</p>	<p style="text-align: right;">Page 68</p> <p>1 20? 2 A. (Witness reviews document) The claim was for a year's 3 disability. 4 Q. It's \$30,000 he was waiting to be paid. 5 A. And under the residual disability, it's based on the 6 earnings each month -- 7 Q. Okay. Let's -- 8 A. -- for what he qualifies for, and to verify your 9 claim. 10 Q. Okay. So that's why it wasn't paid in December. Turn 11 to Bates label 2809, a letter from the accountant 12 dated January 5, '95. This letter says, "Dear Mr. 13 Maxwell, Per the request of Mr. Christopher and your 14 letter of December 27, '94, I am enclosing a copy of 15 Mr. Kearney's '94 monthly earnings statement from 16 Kearney & Associates. This statement represents Mr. 17 Kearney's total income for 1994." Why was the claim 18 not paid on January 5? 19 You're looking ahead to the next letter. Why 20 was the claim not paid -- 21 A. Well, you want to know the answer, don't you? I can't 22 give you the answer on the basis of that. I don't 23 know. In answer to your question, I don't know. 24 Q. Okay. You don't know. Okay. The next letter, 25 another letter from Mr. Maxwell to Mr. Thielen</p>
<p style="text-align: right;">Page 67</p> <p>1 Bates labeled 2707, right? December 13 letter, sir. 2 In this letter Mr. Maxwell says, "Thank you for your 3 letter of November 30. In order that further 4 consideration can be given Mr. Kearney's claim, your 5 additional assistance will be appreciated," so you're 6 asking for more information, right? 7 A. Yes. 8 Q. And then it continues, "Mr. Kearney claims he is the 9 only employee. We will appreciate you confirming this 10 point and if not, please let us know the number of 11 employees and their income from this business." Do 12 you always request that your claimants provide this 13 type of information before you make an initial claim 14 payment? 15 A. It depends upon the circumstances of the claim. 16 Q. And an income statement for 1994. Do you always 17 request income statements from your claimants before 18 making a claim payment? 19 A. Depends again on the circumstances of the claim. 20 Q. Okay. December 20, 1994, Bates labeled 2710, the 21 accountant gives you corporate tax returns, again 22 gives you the income figure, a gross earnings figure, 23 tells you about how many employees he has, a part-time 24 secretary, what her earnings were, and other 25 information. Why was the claim not paid on December</p>	<p style="text-align: right;">Page 69</p> <p>1 thanking him for the additional information provided. 2 Now he wants information because the claim has been 3 referred to our CPA. There's no indication in the 4 claim file of any CPA being engaged in November '94, 5 December '94, January '95, February '95. Who is he 6 talking about? 7 A. This is an in-house CPA. His name is Phil Johnson. 8 He's retired. 9 Residual disability benefit -- residual 10 disability coverage was a relatively new type of 11 benefit and you generally are not -- you generally 12 don't have -- don't require the same information for a 13 total disability claim that you do for a residual 14 disability, and we sought expertise in that area for 15 determining income prior, income -- present income to 16 determine benefits. 17 Q. Why is there no reflection in the claim file other 18 than this general reference to some accountant? Why 19 is there nothing in the claim file that refers the 20 claim to Mr. Johnson for review, a memo back from him 21 saying yes, I reviewed it, here's what I concluded, 22 why is there nothing in the claim file about 23 Mr. Johnson? 24 A. There's no reason for it to be there. It may have 25 been a telephone call outlining some circumstances and</p>

18 (Pages 66 to 69)

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1 he gave us an answer. He may not have seen the file
2 direct.
3 Q. So it was required that Mr. Kearney provide you with
4 the initial information you requested on November 8,
5 more information after that, monthly earning
6 statements, now he's got to explain computer training
7 expenses before he gets his benefit payment, right?
8 A. That's correct. That would have a bearing on his
9 monthly income and that's something that would have
10 been under his control.
11 Q. Turn to the letter dated January 30, '95, 2802. This
12 is, I think, the fourth letter from the accountant to
13 Mr. Maxwell, January 30, '95. "Dear Mr. Maxwell, "Per
14 the request of Mr. Christopher Kearney and your most
15 recent letter, I am providing information concerning
16 your questions about the commissions and computer
17 expenses on Kearney Associates' '93 corporate return.
18 The commissions, which were paid to an independent
19 agent, were incurred from February '93 to September
20 '93. The computer training expenses were incurred
21 during the period October '93 to December '93."
22 Why wasn't the claim paid on January 30?
23 A. Would have taken some time to review that. Wouldn't
24 have necessarily -- I don't know when we got the
25 claim -- I don't know when we received his letter

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1 and --
2 Q. Okay. The next letter -- go ahead.
3 A. I don't know when we received his letter and of
4 course, it would have been some time before it was
5 processed.
6 Q. Okay. The next letter is dated February 6, '95, Bates
7 labeled 2799. This is Mr. Kearney's demand that you
8 have been holding \$30,000 in benefits for over 90 days
9 and if you don't pay him within four days, he's going
10 to the Ohio Department of Insurance, and that's what
11 triggered the final payment -- or the payment of
12 \$30,000 to him, right?
13 A. Is \$30,000 the correct amount? I don't know.
14 Q. The next letter, the next letter in your exhibit,
15 2798, dated February 10, 1995, enclosing checks in the
16 sums of 11,200 and 19,250.
17 A. Yeah, after the receipt of this letter, it was paid.
18 Q. Okay. Do claimants generally have to threaten going
19 to the Ohio Department of Insurance before they get a
20 claim payment?
21 A. No.
22 Q. Why did Mr. Kearney have to?
23 A. He chose to do it.
24 Q. Okay. During this period of time you said that
25 residual was unusual. Were you paying close attention

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1 to the terms of his policy and his residual disability
2 benefit rider in order to determine what his benefits
3 are?
4 A. Well, apparently we didn't, because we made an error
5 in the payment.
6 Q. Okay. So you saw where I was going. Obviously you
7 were. You spent three months involved in contacting
8 your in-house CPA, contacting Mr. Kearney's CPA
9 multiple times, writing letters to Mr. Kearney to make
10 certain that before you issued \$30,000 to him, he's
11 deserving of it under the contract. You were
12 reviewing his rights under the contract, were you not?
13 A. No. We were reviewing the information that he
14 furnished for verification of his claim. Now, you
15 must remember that this covers a one-year period that
16 he hasn't contacted us, at the end of a year where he
17 hasn't contacted us. Then he comes claiming the
18 disability back to that date. So after a one-year
19 period, we took 90 days to verify the claim.
20 Q. And your testimony under oath is that you disregarded
21 or paid no attention to what the contract provided?
22 A. I did not -- no, I --
23 Q. You paid close attention to what the contract provided
24 before you were going to issue \$30,000, right?
25 A. We would have looked at what the contract pays, yes.

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1 Q. Okay. Thank you. Do you know why the residual
2 disability benefit rider was revised in the fall of
3 1992?
4 A. I don't even know that it was.
5 Q. Okay. Why don't you give me those other originals
6 back. I'm handing you Defendant's Exhibit 5. Can you
7 hand me that one as well, sir.
8 A. (Indicating)
9 Q. This is a two-page document called Residual Disability
10 Rider and does it have the revision date at the bottom
11 of the document?
12 A. Yes.
13 Q. What's the revision date?
14 A. I can't make it out. Looks like 9-92.
15 Q. Based on your 38-year history and position of Vice
16 President of the company, does this suggest to you
17 that the residual disability benefit rider in the
18 policy was revised in September of 1992?
19 MR. ELLIS: What policy?
20 Q. The residual disability benefit rider was revised in
21 September 1992, that's what it suggests to you, sir?
22 A. Yes, that rider was revised.
23 Q. Okay. Thank you. Do you know why it was revised?
24 A. Do you have a copy of --
25 Q. Mr. Kearney's --

19 (Pages 70 to 73)

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<p style="text-align: right;">Page 74</p> <p>1 A. -- Mr. Kearney's rider?</p> <p>2 Q. I do?</p> <p>3 A. This is obviously -- this is not his policy.</p> <p>4 Q. I know. Here's Exhibit 4. The first page is his</p> <p>5 residual disability rider (Indicating).</p> <p>6 A. (Witness reviews document) It appears that the only</p> <p>7 difference is that we added the waiver of premium</p> <p>8 benefit to the residual benefit.</p> <p>9 Q. The waiver of premium benefit in the revised rider</p> <p>10 explicitly and unambiguously states that the premium</p> <p>11 during residual disability will be waived, correct?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. Where does it say on Mr. Kearney's residual</p> <p>14 disability rider that the premium will be waived or it</p> <p>15 won't be waived, either way? Does it say that on Mr.</p> <p>16 Kearney's rider?</p> <p>17 A. It doesn't say that it will be waived.</p> <p>18 Q. And it doesn't say it won't be waived?</p> <p>19 A. Well, it doesn't say it won't be a lot of things, but</p> <p>20 it has -- in order to qualify for the waiver of</p> <p>21 premium benefit, it would have to be stated in the</p> <p>22 rider, as was done in the revised rider that you</p> <p>23 presented me.</p> <p>24 Q. We'll present a different legal argument than you just</p> <p>25 did, but you would agree with me that in the residual</p>	<p style="text-align: right;">Page 76</p> <p>1 Q. What is it?</p> <p>2 A. From the maximum policy -- maximum benefit period</p> <p>3 shown in the schedule.</p> <p>4 Q. Could you turn to the second page of that revised</p> <p>5 rider, second column. Is there anything in there that</p> <p>6 discusses -- or is that where the waiver of premium</p> <p>7 is?</p> <p>8 A. That's where the waiver of premium is.</p> <p>9 Q. Okay. How about the first column? Let me look at it.</p> <p>10 A. (Indicating)</p> <p>11 Q. The first column on the second page talks about waiver</p> <p>12 of premium and the subsection 1 of the first paragraph</p> <p>13 on the second page, first column, says that on</p> <p>14 residual disability, the company will waive premiums</p> <p>15 that come due during the disability.</p> <p>16 In the second column of this exhibit under</p> <p>17 Termination, it says the rider will terminate on the</p> <p>18 premium due date next following your 65th birthday,</p> <p>19 right?</p> <p>20 A. Right.</p> <p>21 Q. Okay. Is there anything in Mr. Kearney's earlier</p> <p>22 dated residual disability rider prepared by your</p> <p>23 company that says how long the residual disability</p> <p>24 rider would be applicable? Does it give an age limit?</p> <p>25 A. Yeah, residual disability has to begin prior to the</p>
<p style="text-align: right;">Page 75</p> <p>1 disability benefit rider that Mr. Kearney purchased in</p> <p>2 '90 and in '91, it doesn't say that if you're on</p> <p>3 residual disability, the premiums will be waived, and</p> <p>4 it doesn't say that if you're on residual disability,</p> <p>5 the premiums won't be waived; is that correct?</p> <p>6 A. It does not say that they will be waived, it doesn't</p> <p>7 say that they will not be waived, and it doesn't say</p> <p>8 that there were not a lot of things would not be done.</p> <p>9 Q. But on the revised rider that your company prepared,</p> <p>10 your company went to the effort in 1992 to create a</p> <p>11 revised residual disability rider regardless of what</p> <p>12 policy it applies to, and it specifically put in</p> <p>13 there -- your company specifically, explicitly, and</p> <p>14 unambiguously provided that the waiver of premium goes</p> <p>15 with residual disability, correct?</p> <p>16 A. In this particular policy, yes.</p> <p>17 Q. Okay. Does the revised residual disability rider talk</p> <p>18 about how long you can be receiving residual</p> <p>19 disability benefits, till a certain age or life? It's</p> <p>20 on the second page, second column.</p> <p>21 A. Are we talking about waiver of premium?</p> <p>22 Q. No, I moved off the waiver of premium. I'm done with</p> <p>23 that one. I'm now talking about the term the benefits</p> <p>24 would be payable.</p> <p>25 A. It tells the term, yes.</p>	<p style="text-align: right;">Page 77</p> <p>1 65th birthday.</p> <p>2 Q. Okay. But does it say when residual disability</p> <p>3 benefits would stop?</p> <p>4 A. For the maximum benefit period, the same as the other.</p> <p>5 Q. Okay. And the maximum benefit period is what?</p> <p>6 A. It's stated on the schedule of the policy.</p> <p>7 Q. If you become disabled before the age of 45, the</p> <p>8 maximum benefit period is lifetime, correct?</p> <p>9 A. If that's what the policy provides, yes.</p> <p>10 Q. Okay. Let me show you Exhibit 3. Exhibit 3 is the</p> <p>11 policy with schedules. There's two schedules, one for</p> <p>12 each of the policies that Mr. Kearney purchased. What</p> <p>13 is the maximum benefit period for disabilities that</p> <p>14 begin before age 45?</p> <p>15 A. Well, for total disability beginning prior to age 45,</p> <p>16 lifetime.</p> <p>17 Q. Okay. And what does it say --</p> <p>18 A. On or after 45, age 65, and two months -- 24 months</p> <p>19 after age 63.</p> <p>20 Q. Okay. I'm confused. What is the maximum benefit</p> <p>21 period for disabilities that begin before age 45?</p> <p>22 A. Lifetime.</p> <p>23 Q. Okay. Does it say one way or the other on that</p> <p>24 schedule in the policy -- take your time and look at</p> <p>25 it -- or on the rider what the maximum benefit period</p>

20 (Pages 74 to 77)

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John L. Roberson**

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<p>1 is for residual disability that begins before the age</p> <p>2 of 45?</p> <p>3 A. Yes, the maximum benefit period shown in the schedule.</p> <p>4 Q. Very well. Thank you. Did you make an error when you</p> <p>5 just said that or is that correct?</p> <p>6 A. The benefit period is lifetime for prior to age 45.</p> <p>7 Q. Thank you. Can I have that.</p> <p>8 A. (Indicating)</p> <p>9 MR. ELLIS: We're going to have to take a</p> <p>10 couple minute break here, Mike.</p> <p>11 MR. ROBERTS: Okay.</p> <p>12 (Brief recess)</p> <p>13 Q. Mr. Roberson, I don't know that I have very much more</p> <p>14 than just -- let me just take another 30 seconds here</p> <p>15 to see what we have.</p> <p>16 Did you speak with Mr. Maxwell in the past 24</p> <p>17 hours?</p> <p>18 A. Talked to him last night, yes.</p> <p>19 Q. Did you talk to him about Mr. Kearney's claim at all?</p> <p>20 A. No, just about -- well, yeah, we mentioned it was --</p> <p>21 in general what it was, nothing specific.</p> <p>22 Q. Can you share with me what the two of you shared.</p> <p>23 A. I don't recall specifically.</p> <p>24 Q. You had a conversation with him last night and you</p> <p>25 can't tell me what you all said?</p>	<p>1 A. Yes.</p> <p>2 Q. Did you speak to Harold Shelton in the past two days?</p> <p>3 A. Yes.</p> <p>4 Q. Did you tell him that you had been informed that you</p> <p>5 had made a mistake for four years and him for eight or</p> <p>6 nine years?</p> <p>7 A. I told him yes, we made a mistake for that period of</p> <p>8 time, yes.</p> <p>9 Q. Okay. Did you speak to Valerie Loftin in the past two</p> <p>10 days?</p> <p>11 A. No.</p> <p>12 Q. How is it that the four of you made 300 mistakes when</p> <p>13 the policy so unambiguously doesn't allow for benefits</p> <p>14 to Mr. Kearney?</p> <p>15 A. It would just be a matter of conjecture as to why we</p> <p>16 did. It's obvious that we -- obvious that we did.</p> <p>17 Why? I don't know.</p> <p>18 Q. Okay. Do you generally have difficulty reading and</p> <p>19 understanding explicit and unambiguous language in the</p> <p>20 policies that you were responsible for overseeing for</p> <p>21 decades?</p> <p>22 A. No.</p> <p>23 MR. ELLIS: Objection.</p> <p>24 Q. I didn't think so.</p> <p>25 Are the claim files ever audited internally?</p>
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<p>1 A. Well, I talked about his health and how he had been</p> <p>2 and how I hadn't seen him for a long time.</p> <p>3 Q. Just about Mr. Kearney.</p> <p>4 A. Just it was a disability claim where we overpaid the</p> <p>5 benefits and --</p> <p>6 Q. After meeting with Mr. Ellis, you had a conversation</p> <p>7 with Mr. Maxwell and you told Mr. Maxwell that you had</p> <p>8 made a mistake and overpaid the benefits?</p> <p>9 A. After meeting with Mr. Ellis?</p> <p>10 Q. Uh-huh.</p> <p>11 A. Yeah, I met Mr. Ellis yesterday.</p> <p>12 Q. Okay. And then you had a conversation with</p> <p>13 Mr. Maxwell and you told Mr. Maxwell that we had</p> <p>14 overpaid Kearney?</p> <p>15 A. Yes.</p> <p>16 Q. Okay.</p> <p>17 A. Told him that's what the case was about.</p> <p>18 Q. Have you talked with Phyllis Harden in the past week?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. When did you speak with her?</p> <p>21 A. Day before yesterday, I think.</p> <p>22 Q. Did you talk to her about Kearney?</p> <p>23 A. Yes.</p> <p>24 Q. Did you discuss with her that you and she had made a</p> <p>25 mistake for you four years, her eight or nine years?</p>	<p>1 A. By whom?</p> <p>2 Q. Well, I understand that monthly you did a little</p> <p>3 quality control by making sure the payment was proper.</p> <p>4 Was there any other procedure in place of a quality</p> <p>5 control type nature to audit the files to make sure</p> <p>6 that they're being paid appropriately?</p> <p>7 A. Nothing formal, no.</p> <p>8 Q. What is informal?</p> <p>9 A. Occasionally I would look at the files for the</p> <p>10 continuing disability for reserving purposes, yes,</p> <p>11 myself.</p> <p>12 Q. You would perform the auditing function to the extent</p> <p>13 there was one?</p> <p>14 A. Yes.</p> <p>15 Q. Would you have a role in setting reserves?</p> <p>16 A. They were automatically -- they were automatically set</p> <p>17 when the claim -- based on the claim.</p> <p>18 Q. Let me show you something, Exhibit 14, which is Mr.</p> <p>19 Kearney's proposal. We discussed the preparation of</p> <p>20 proposals earlier. Could you turn to page 2.</p> <p>21 A. Okay.</p> <p>22 Q. This is broken into two sections. There's something</p> <p>23 BASIC BENEFITS -- you're on the right page. Do you</p> <p>24 see --</p> <p>25 A. Yeah, okay.</p>

21 (Pages 78 to 81)

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<p style="text-align: right;">Page 82</p> <p>1 Q. Do you need your glasses?</p> <p>2 A. I'll get them. Okay.</p> <p>3 Q. Okay. Do you see where it says BASIC BENEFITS?</p> <p>4 A. Uh-huh.</p> <p>5 Q. And then there's four or five lines and a couple of</p> <p>6 descriptive paragraphs, and then there's another</p> <p>7 heading called ADDITIONAL BENEFITS?</p> <p>8 A. Yes.</p> <p>9 Q. And ADDITIONAL BENEFITS is broken into three or four</p> <p>10 sections, one of those sections being Residual</p> <p>11 Disability, do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Let me read Residual Disability. I want to</p> <p>14 talk to you about it. "Residual Disability pays a</p> <p>15 percentage of the Basic Benefit" -- that's what's</p> <p>16 above, right?</p> <p>17 A. Uh-huh.</p> <p>18 Q. -- "and Social Security Supplement, if applicable,</p> <p>19 when you are residually disabled and suffer a loss of</p> <p>20 earnings of 20 percent or more." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. Let's break that down a little bit. Residual</p> <p>23 disability pays a percentage of the basic benefit.</p> <p>24 That's referring to everything in the top half of the</p> <p>25 page, right?</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. Uh-huh.</p> <p>2 A. I assume so.</p> <p>3 Q. Is yours different?</p> <p>4 A. Yes, I don't know what the if applicable means,</p> <p>5 because you couldn't get Social Security -- you</p> <p>6 couldn't get residual on a Social Security benefit.</p> <p>7 Q. Well, this says you do. It says you get it.</p> <p>8 A. Well, we paid the benefit on the basis of the</p> <p>9 contract, not the proposal.</p> <p>10 Q. Sir, we're talking about the proposal right now, okay?</p> <p>11 Now, the proposal is something -- we talked about the</p> <p>12 proposal at length earlier. The proposal is something</p> <p>13 that's created with input from all different people in</p> <p>14 the company, it's drafted, it's redrafted, it's</p> <p>15 finally blessed, then there's a template form, and the</p> <p>16 people that create it know what they're taking about.</p> <p>17 That's what you told me earlier.</p> <p>18 MR. ELLIS: Objection, misstates the</p> <p>19 testimony. That was the testimony on the policy.</p> <p>20 Q. Okay. Right? The people that create this proposal</p> <p>21 know what they're talking about when they're telling</p> <p>22 policyholders what the policy provides, right?</p> <p>23 A. I don't know -- they're not correct in this point.</p> <p>24 Q. Okay. So let me understand correctly. Sir, proposals</p> <p>25 are prepared by Jefferson-Pilot, correct?</p>
<p style="text-align: right;">Page 83</p> <p>1 A. Right.</p> <p>2 Q. And Social Security Supplement, if applicable. So</p> <p>3 sometimes a policyholder might not buy any riders,</p> <p>4 right, they just buy the policy and they choose not to</p> <p>5 buy the increased COLA and Social Security or the</p> <p>6 residual disability, right?</p> <p>7 A. That's correct.</p> <p>8 Q. And you can choose to buy the residual disability</p> <p>9 rider and not buy the Social Security Supplement</p> <p>10 rider, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. So what this says is pays a percentage of the</p> <p>13 basic benefit and Social Security Supplement, if</p> <p>14 applicable. If applicable means if you've purchased</p> <p>15 that rider also, you get that, correct?</p> <p>16 A. No, I don't know what if applicable means in this</p> <p>17 particular case.</p> <p>18 Q. It can mean one or two different things? Let's talk</p> <p>19 about my meaning. Could it mean what I said? If this</p> <p>20 says if you're residually disabled, you get everything</p> <p>21 under basic benefit above there and you get Social</p> <p>22 Security, and my interpretation of if applicable is,</p> <p>23 you get Social Security Supplement if you purchase</p> <p>24 that rider, too. Is that reasonable?</p> <p>25 A. That's your interpretation?</p>	<p style="text-align: right;">Page 85</p> <p>1 A. That's correct.</p> <p>2 Q. The people that prepare them are well-trained and</p> <p>3 educated on what the policies provide, correct?</p> <p>4 A. They should be.</p> <p>5 Q. Okay. There isn't one person that prepares them; the</p> <p>6 preparation of a proposal takes into account input</p> <p>7 from various people throughout the organization, true?</p> <p>8 A. I didn't have a direct responsibility for that, so I</p> <p>9 can't say true -- I'm sure there were other people</p> <p>10 that looked at it.</p> <p>11 Q. Okay. And then there's a final stage where the final</p> <p>12 draft or proposal is approved by the company, correct?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. So for it to be wrong that Social Security</p> <p>15 Supplement goes with residual disability, a whole</p> <p>16 bunch of people involved in the preparation of the</p> <p>17 proposal would have to be wrong, the company would</p> <p>18 have to be wrong, and they would all have to be wrong</p> <p>19 in addition to you and your subordinates being wrong</p> <p>20 300 times to come to the conclusion that Mr. Kearney</p> <p>21 has been overpaid?</p> <p>22 A. They weren't involved in the claim.</p> <p>23 Q. Okay. Thank you.</p> <p>24 A. I might also point out that this is a proposal. It's</p> <p>25 not a policy of insurance.</p>

22 (Pages 82 to 85)

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<p>1 Q. Very well.</p> <p>2 A. And information can be found on the policy form.</p> <p>3 Q. All right. And the same people that --</p> <p>4 A. Policy Form 576.</p> <p>5 Q. And the same people that prepared the policy are the</p> <p>6 ones that prepared the proposal, Jefferson-Pilot,</p> <p>7 correct?</p> <p>8 A. No. The policy is prepared -- is designed in the</p> <p>9 Actuarial Department. The Actuarial Department does</p> <p>10 not have anything to do with the proposal.</p> <p>11 Q. I thought you told me you didn't know who has input on</p> <p>12 the proposal. Your testimony now under oath, your</p> <p>13 sworn testimony is, the Actuarial Department has</p> <p>14 nothing to do with the creation of the proposal?</p> <p>15 A. It's done in the Marketing Department. Actuarial</p> <p>16 would not.</p> <p>17 Q. Okay. You told me earlier that Actuarial was --</p> <p>18 A. If I did --</p> <p>19 Q. Your testimony is your testimony.</p> <p>20 MR. ELLIS: No, you didn't. Don't worry</p> <p>21 about it.</p> <p>22 MR. ROBERTS: Don't worry about it. I'm Big</p> <p>23 Brother.</p> <p>24 Q. Thank you. Where in the proposal or the policy or any</p> <p>25 rider does it say you don't get the Social Security</p>	<p>1 disability? Do you use the same definition as total</p> <p>2 disability?</p> <p>3 A. It's the same as the maximum benefit period for total</p> <p>4 disability.</p> <p>5 Q. There's no separate independent definition for maximum</p> <p>6 benefit period for residual disability, correct?</p> <p>7 A. Only if you're over the age of 45.</p> <p>8 Q. It's different under residual disability than it is</p> <p>9 under total disability?</p> <p>10 A. Yes, it's --</p> <p>11 Q. My question is --</p> <p>12 MR. ELLIS: I'm sorry, let him answer that</p> <p>13 one before you ask the next one.</p> <p>14 Q. That wasn't the question I asked. Is there an</p> <p>15 independent, independent from total disability</p> <p>16 definition, is there an independent definition of</p> <p>17 maximum benefit period for residual disability</p> <p>18 independent of maximum benefit period definition for</p> <p>19 total disability?</p> <p>20 A. Yes, in the rider it states if you're age 45 or older</p> <p>21 when the residual disability begins, it's a maximum --</p> <p>22 in the Social Security the residual disability rider.</p> <p>23 Q. In the residual disability rider where is --</p> <p>24 A. That's what I understood you to say.</p> <p>25 Q. Okay. Where is the definition of maximum benefit</p>
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<p>1 Supplement?</p> <p>2 A. For residual?</p> <p>3 Q. Uh-huh.</p> <p>4 A. Got a copy of the policy?</p> <p>5 Q. (Indicating) And here's the Social Security</p> <p>6 Supplement rider.</p> <p>7 A. The monthly benefit of this policy will be increased</p> <p>8 by the amount of Social Security Supplement benefit</p> <p>9 shown in the schedule if you're entitled to receive</p> <p>10 monthly benefits for total disability.</p> <p>11 Q. Where are you reading?</p> <p>12 A. First paragraph (Indicating).</p> <p>13 Q. Does this rider say anything about residual</p> <p>14 disability?</p> <p>15 A. No.</p> <p>16 Q. Okay. Does the policy -- look at the policy. Do the</p> <p>17 words "residual disability" reside anywhere in the</p> <p>18 policy?</p> <p>19 A. No, it would be in the rider that's attached to the</p> <p>20 policy becoming a part of it.</p> <p>21 Q. Okay. So what's the elimination period for residual</p> <p>22 disability? Is it the same as -- do you use the total</p> <p>23 disability definition of elimination period?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. What is the maximum benefit period for residual</p>	<p>1 period in the residual disability rider?</p> <p>2 A. You asked for a limitation. The difference --</p> <p>3 Q. I asked about the definition of maximum benefit</p> <p>4 period. Where is that defined in the residual</p> <p>5 disability rider?</p> <p>6 A. In the third paragraph it appears --</p> <p>7 Q. What does it say?</p> <p>8 A. It says total disability and residual -- during period</p> <p>9 of residual disability Jefferson-Pilot will continue</p> <p>10 to pay the residual disability monthly benefit for</p> <p>11 each month you are residually disabled until the</p> <p>12 combination of total disability and residual</p> <p>13 disability benefits equal to the maximum benefit</p> <p>14 period.</p> <p>15 Q. Okay. Where is the maximum --</p> <p>16 MR. ELLIS: Wait a minute. Let him finish.</p> <p>17 MR. ROBERTS: Sorry, Big Brother.</p> <p>18 A. However, the residual benefit will not be payable for</p> <p>19 longer than 24 months if you are age 55 or older when</p> <p>20 the period of disability began and the residual</p> <p>21 disability is not preceded by at least 180 days of</p> <p>22 total disability. So there is that limitation in the</p> <p>23 residual benefit for age 55 or older. I may have said</p> <p>24 45 earlier.</p> <p>25 Q. Okay. That doesn't apply here, okay? Mr. Kearney</p>

23 (Pages 86 to 89)

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<p style="text-align: right;">Page 90</p> <p>1 became residually disabled before 45. Where is the 2 definition -- independent from the definition for 3 total disability, where is the definition for maximum 4 benefit period for people who become residually 5 disabled prior to the age of 45? 6 A. The maximum benefit period is the maximum benefit 7 period shown in the schedule. 8 Q. It's the same as -- 9 A. Yes. 10 Q. You use the total disability definition? 11 A. That's correct. 12 Q. Okay. Thank you. And is there an independent 13 definition for monthly benefit different than total 14 disability, independent for residual disability 15 different than total disability? 16 A. Do you want to state that again. 17 Q. I will. There's a definition in the policy -- turn to 18 the policy, page 3. There's a definition of monthly 19 benefit. 20 A. Okay. 21 Q. Is that the definition you use for residual disability 22 also? 23 A. Yes. 24 Q. Okay. So the proposal is wrong, in your judgment, 25 today?</p>	<p style="text-align: right;">Page 92</p> <p>1 left. 2 Q. Let me show you Exhibit 9 again. In Exhibit 9 under 3 Remarks, it talks about residual -- well, there's a 4 bunch of writing. Why don't you tell me what that is 5 and why it's there, please. 6 MR. ROBERTS: Objection, foundation. 7 A. That's a note to advise that those benefits -- that 8 coverage was provided in the policy since it was an 9 optional benefit and it's something that could be 10 overlooked. 11 MR. ROBERTS: Objection, move to strike. 12 Q. One of the things it says in there is 50 percent MM 13 first six months. What does that mean? 14 MR. ROBERTS: Objection. 15 A. The residual disability benefit -- for the first six 16 months of residual disability there's a minimum 17 50 percent benefit if he otherwise qualifies. 18 Q. Was Mr. Kearney according to this schedule ever paid 19 only 50 percent? 20 A. No. 21 Q. Counsel has asked you about these overpayments from 22 '93 forward and I'd like to direct your attention to 23 the column marked RES. What's that stand for? 24 A. That's reserve. 25 Q. Okay. What's the I?</p>
<p style="text-align: right;">Page 91</p> <p>1 A. With regards to the payment of Social Security -- 2 Q. What about COLA? 3 A. -- on residual. COLA is the same thing. COLA does 4 not apply to residual disability benefit. 5 Q. And your opinion of that was different from '93 to 6 '97? 7 A. No, my opinion was not different. I overlooked it in 8 this particular case. 9 MR. ROBERTS: We're done. Thank you. 10 MR. ELLIS: I have a few questions. 11 MR. ROBERTS: I knew you would. 12 13 EXAMINATION (by Mr. Ellis): 14 15 Q. You told counsel that -- you identified the people 16 that were in the Claims Department handling individual 17 disability. Can you tell me roughly how many claims a 18 month they ran. 19 A. Approximately a thousand. 20 Q. Was the personnel sufficient to manage the workload at 21 that time? 22 MR. ROBERTS: Objection. 23 A. It was difficult. 24 Q. When Mr. Maxwell left, what happened to his workload? 25 A. It was distributed between the analysts that were</p>	<p style="text-align: right;">Page 93</p> <p>1 A. Initial payment. 2 Q. P? 3 A. Partial payment. 4 Q. What's the F in March 3 of '94? 5 A. Final payment. The claim form is sent -- the document 6 indicated he can go back to work the next day. 7 Q. So he was given a final payment? 8 A. Yes. 9 MR. ROBERTS: Objection, leading. 10 A. It was a final payment that the doctor indicated on 11 his claim form that he could return to work the next 12 day. 13 Q. Then next to the February 7 of '95, what do the 14 initials there mean? 15 A. RP which reopens payment. 16 Q. Okay. Does that indicate whether this is a new claim 17 or a continuation of the claim? 18 A. That would indicate a continuation of a prior claim. 19 Q. Okay. 20 A. Except it indicates it is a residual benefit -- 21 residual disability benefit with no COLA applicable. 22 MR. ROBERTS: Sir, she's having difficulty 23 hearing you. 24 THE WITNESS: Oh, I'm sorry. 25 Q. It indicates under the status -- what does it</p>

24 (Pages 90 to 93)

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1 indicate?

2 A. This is not residual disability and no COLA. That's

3 an indication made by Bob Maxwell.

4 Q. This is not or this is residual?

5 A. This is residual, I'm sorry.

6 Q. And that's Bob Maxwell's writing?

7 A. Yes.

8 Q. Okay. Anytime prior to Mr. Maxwell's retirement, was

9 the COLA benefit added to Mr. Kearney's benefit?

10 A. No. He retired prior to July '95.

11 Q. When was the first COLA adjustment made?

12 A. In August 1995.

13 Q. And did that pay the COLA retroactively?

14 A. Yes.

15 Q. During the period of time leading up to that

16 particular payment, is there any indication that Mr.

17 Kearney got less than the full basic benefit on any

18 one month's payment?

19 A. No.

20 Q. Later sheets, specifically 0961, has notations at the

21 top. Can you recognize that handwriting on it?

22 A. It appears to be either Kim's or -- Kim Brann's or

23 Phyllis Harden's.

24 Q. And what does it say on that page?

25 A. "COLA does not apply to residual."

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1 Q. Yet the COLA was still being paid?

2 A. Yes.

3 Q. And on page 0962, again at the top?

4 A. It says "COLA does not apply to residual" and then

5 there's a note "We are pay TD," total disability,

6 "benefits, COLA applies."

7 Q. So someone got the impression this was a total

8 disability claim?

9 A. Yes.

10 MR. ROBERTS: Objection, move to strike.

11 Q. From the claim forms that you reviewed including the

12 one counsel showed you, was this new claim that began

13 in '94 ever a total disability claim?

14 A. No, sir.

15 Q. If I look at the policy itself and the riders,

16 Exhibits 3 and 4, are they the basis for the payment

17 of any claims?

18 A. Yes, sir.

19 Q. Are claims paid on riders that are subsequently

20 developed or only the ones sold with the policy?

21 A. Only the ones sold with the policy.

22 MR. ROBERTS: Shows the ambiguity, though.

23 Q. Looking at the contract itself, were benefits absent

24 the riders ever due under the policy for total

25 disability after 1993?

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1 MR. ROBERTS: Objection.

2 A. No, sir.

3 Q. Looking at the riders, what is required before someone

4 becomes eligible for residual disability?

5 MR. ROBERTS: Do you want him to read from

6 the document you have marked up with some notes? Can

7 I see it before the witness reads from the document

8 that's marked up?

9 MR. ELLIS: I'm sorry, we'll use yours. I

10 don't care. I'm just trying to be -- can I have

11 Exhibits 3 and 4, please.

12 MR. ROBERTS: Typical Bill.

13 MR. ELLIS: He certainly doesn't need my

14 annotations.

15 MR. ROBERTS: Say again.

16 MR. ELLIS: He certainly doesn't need my

17 annotations.

18 MR. ROBERTS: He knew how to pay the policy

19 until you told him otherwise two days ago, so

20 apparently he does need your annotations.

21 THE WITNESS: I still know how to pay the

22 policy, but I made a mistake.

23 MR. ROBERTS: 300 mistakes.

24 MR. ELLIS: If that's the number. I didn't

25 make -- well, okay.

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1 MR. ROBERTS: I don't have it. He has it.

2 MR. ELLIS: There we go.

3 A. What's the question again?

4 Q. Yes. Let's start with actually the COLA provisions in

5 the policy, which are identified --

6 A. It's under Benefit Provisions.

7 Q. -- under Benefit Provisions?

8 A. Increasing Benefits.

9 Q. That's the provision we're referring to as COLA?

10 A. Yes, sir.

11 Q. What is required in order to trigger the applicability

12 of the COLA provision or the increase in benefits

13 provision?

14 MR. ROBERTS: Objection, legal conclusion.

15 A. Requires that you be totally disabled for 12

16 consecutive months in order to receive the increase in

17 benefits.

18 Q. And how do you come to that conclusion?

19 A. The policy -- reading the policy, it says after you

20 have received benefits for total disability for 12

21 consecutive months, your monthly benefit will be

22 increased during the continuance of that period of

23 disability up to your 65th birthday. The increase

24 will be 3 percent of the maximum benefits shown on the

25 schedule for each --

25 (Pages 94 to 97)

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<p style="text-align: right;">Page 98</p> <p>1 Q. I'm sorry, 3 percent of what?</p> <p>2 A. 3 percent of the monthly benefit shown in the schedule</p> <p>3 for each successive 12-month period of total</p> <p>4 disability after the first period. The benefit</p> <p>5 payable will not be increased for any part of any</p> <p>6 period of total disability beyond your 65th birthday.</p> <p>7 Q. Now, let me ask if there is any -- according to your</p> <p>8 understanding of this claim, was there any 12-month</p> <p>9 period, consecutive 12-month period, when Mr. Kearney</p> <p>10 even claimed to be totally disabled?</p> <p>11 A. No, sir.</p> <p>12 Q. Failing that, could he have qualified for the increase</p> <p>13 in benefits?</p> <p>14 MR. ROBERTS: Objection, legal conclusion.</p> <p>15 A. No, sir, based on the contract, he couldn't.</p> <p>16 Q. I direct your attention to the Social Security</p> <p>17 Supplement. Is there a prerequisite to that benefit</p> <p>18 becoming applicable to any --</p> <p>19 A. Yeah, you must be entitled to receive --</p> <p>20 MR. ROBERTS: Objection, move to strike.</p> <p>21 A. -- the monthly benefits for total disability.</p> <p>22 Q. Okay. What's the basis for you saying that?</p> <p>23 MR. ROBERTS: Objection, move to strike.</p> <p>24 A. I'm reading from the rider.</p> <p>25 Q. You're reading directly from the rider?</p>	<p style="text-align: right;">Page 100</p> <p>1 payment made, that's correct.</p> <p>2 Q. During that period of time, as far as you can tell</p> <p>3 from the policy and from the nature of the claim that</p> <p>4 is being concededly a residual claim, was there any</p> <p>5 basis upon which you could justify paying either the</p> <p>6 COLA benefits or the Social Security benefits?</p> <p>7 MR. ROBERTS: Objection.</p> <p>8 A. No, sir.</p> <p>9 Q. Taking a look at the proposal that you were shown</p> <p>10 which is Exhibit 14 -- do you still have that in front</p> <p>11 of you?</p> <p>12 A. I don't have it.</p> <p>13 MR. ROBERTS: Do you want to use one of your</p> <p>14 marked-up copies, Bill, or do you want to use the --</p> <p>15 MR. ELLIS: If you have the original exhibit,</p> <p>16 that probably would be better.</p> <p>17 MR. ROBERTS: Do you have it over there? Is</p> <p>18 it in your hand, Bill?</p> <p>19 MR. ELLIS: No. I have my copy.</p> <p>20 THE WITNESS: I thought I gave it back to</p> <p>21 you.</p> <p>22 MR. ROBERTS: (Indicating)</p> <p>23 Q. Looking at page 0641 -- at least it has the Bates</p> <p>24 stamp 0641 -- in Exhibit 14, can you read the bolded</p> <p>25 and all caps paragraph there.</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes, sir.</p> <p>2 Q. Was there any period of time that you're aware of that</p> <p>3 Mr. Kearney was entitled to receive monthly benefits</p> <p>4 for total disability?</p> <p>5 MR. ROBERTS: Objection.</p> <p>6 A. No, sir.</p> <p>7 MR. ROBERTS: Foundation. He's testified he</p> <p>8 doesn't know anything about the claim.</p> <p>9 Q. If someone is totally disabled and then becomes</p> <p>10 residually disabled subsequently, is he entitled to a</p> <p>11 continuance of the Social Security benefits?</p> <p>12 MR. ROBERTS: Objection.</p> <p>13 A. No, sir.</p> <p>14 Q. Was the lack of claims personnel and the volume of</p> <p>15 claims part of the assets you were discussing when you</p> <p>16 discussed why Jefferson-Pilot got out of the</p> <p>17 disability business?</p> <p>18 MR. ROBERTS: Objection, leading.</p> <p>19 A. Yes.</p> <p>20 Q. According to the letter that you were shown making the</p> <p>21 \$30,000 payments in Exhibit 9, was this claim paid, as</p> <p>22 far as you can tell, up through December of 1999?</p> <p>23 MR. ROBERTS: Objection. He testified he has</p> <p>24 no knowledge of the claim, no foundation.</p> <p>25 A. Based on the claims worksheet which indicates each</p>	<p style="text-align: right;">Page 101</p> <p>1 A. "This is a proposal. It is not a policy or insurance</p> <p>2 contract. Coverage can be provided only after you</p> <p>3 have submitted an application, met our underwriting</p> <p>4 requirements, and been accepted for insurance.</p> <p>5 Additional information can be found in policy form</p> <p>6 WJ576."</p> <p>7 Q. Right above that there is a statement or paragraph</p> <p>8 that talks about what the proposal is based on. Can</p> <p>9 you tell us what this proposal was based on.</p> <p>10 A. It says based on policy form WJ576. Premium quoted is</p> <p>11 for a male, age 37 in occupational class 3A with a</p> <p>12 90-day elimination period and a to age 65 benefit</p> <p>13 period.</p> <p>14 Q. Now, looking at the policy, specifically the schedule,</p> <p>15 is the proposal as based actually what Mr. Kearney</p> <p>16 bought with regard to the maximum benefit period?</p> <p>17 MR. ROBERTS: Objection.</p> <p>18 A. Not in accordance with the proposal. It's a lifetime</p> <p>19 benefit prior to age 45.</p> <p>20 Q. So in effect Mr. Kearney bought something different</p> <p>21 from what this proposal makes --</p> <p>22 MR. ROBERTS: Objection.</p> <p>23 A. That is correct.</p> <p>24 Q. Looking at the --</p> <p>25 A. Wait a minute. I want to correct that. The proposal</p>

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1 does say if disability begins prior to age 45,
 2 benefits are payable for life.
 3 Q. Okay. So he bought the same thing?
 4 A. Yes.
 5 MR. ROBERTS: That's why you shouldn't answer
 6 leading questions affirmatively just because he's your
 7 lawyer. That's why he shouldn't be asking leading
 8 questions.
 9 MR. ELLIS: Are you finished speaking?
 10 MR. ROBERTS: No. Let me --
 11 MR. ELLIS: Well, keep going, Buddy.
 12 MR. ROBERTS: Well --
 13 MR. ELLIS: You know, this is your game. You
 14 just talk the way you want.
 15 MR. ROBERTS: The rules of evidence exist,
 16 too, in addition to the code of civil procedure and
 17 code of professional responsibility.
 18 Q. With regard to the second proposal that was made to
 19 him which is 0633 on the other policy -- it may be the
 20 first, I'm not sure which -- does that have the same
 21 statement about this not being an insurance policy?
 22 MR. ROBERTS: Objection, leading. Objection,
 23 legal conclusion.
 24 A. Yes.
 25 Q. Mr. Roberson, I'm looking at Exhibit 19.

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1 MR. ELLIS: Do you have 19?
 2 MR. ROBERTS: Oh, I didn't realize I was your
 3 paralegal (Indicating).
 4 Q. Looking at the second paragraph in the letter from Mr.
 5 Kearney to you, was there apparently some discussion
 6 or consideration whether this was a new claim or a
 7 continuation of the previous claim?
 8 MR. ROBERTS: Objection, calls for
 9 speculation, foundation. Go ahead.
 10 A. Yes, Mr. Kearney states that there have been
 11 discussions about it.
 12 Q. You left the company how long ago, sir?
 13 A. A little over seven years ago, April 1, 1997.
 14 Q. As of the time that you left the company, according to
 15 Exhibit 9, had Mr. Kearney been paid to date?
 16 MR. ROBERTS: Objection.
 17 A. Yes, sir.
 18 Q. Had he been paid COLA and Social Security benefits in
 19 addition to date?
 20 MR. ROBERTS: Objection.
 21 A. Erroneously, yes.
 22 MR. ROBERTS: Move to strike.
 23 MR. ELLIS: Thank you, sir. That's all the
 24 questions I have.
 25

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1 FURTHER EXAMINATION (by Mr. Roberts):
 2
 3 Q. Mr. Roberson, let me understand correctly, okay? What
 4 I hear your lawyer saying and you saying yeah, that's
 5 right, Lawyer, is, the department was overloaded and
 6 that's how we made 300 mistakes.
 7 MR. ELLIS: Objection to form.
 8 Q. Is that what you're suggesting?
 9 A. If memory serves me correctly, he said was that part
 10 of the reason you went out of business, that you went
 11 out of -- discontinued that line of business.
 12 Q. Well, he was trying to say something else and maybe
 13 you didn't pick up on it. Did you make 300 mistakes
 14 because the department was overloaded?
 15 A. I don't know why we made 300 mistakes.
 16 Q. Okay. The people that prepared the proposal, were
 17 they also overloaded and they misrepresented the
 18 policy, too?
 19 MR. ELLIS: Objection to form.
 20 A. I have no knowledge of that.
 21 Q. Okay. Is it your judgment that the proposal given to
 22 Mr. Kearney and the policy don't provide for the same
 23 benefits?
 24 A. In what respect?
 25 Q. Does the proposal accurately depict what the policy

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1 provides?
 2 A. The question we had with regards to the payment of the
 3 residual disability benefit appears to be contrary to
 4 the policy.
 5 Q. Okay. So was the proposal department overloaded and
 6 they got it wrong, too?
 7 A. I have no idea.
 8 Q. You testified -- well, actually he testified and then
 9 you said yeah --
 10 MR. ELLIS: Objection to form.
 11 Q. He asked you a leading question, is there any basis on
 12 which Mr. Kearney could have gotten COLA or Social
 13 Security, and you said no. In 38 years with the
 14 company, Vice President, head of the department,
 15 affirming the propriety of every payment for four
 16 years, certainly there was some basis. You were
 17 making payments to the policyholder with no basis?
 18 A. In accordance with the contract, those benefits should
 19 not have been paid.
 20 Q. There was absolutely no basis and you made a mistake
 21 every month for four years with no basis to support
 22 why it is you made a mistake; is that right?
 23 A. That's correct.
 24 Q. That's your sworn testimony?
 25 A. That's what it shows.

27 (Pages 102 to 105)

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<p style="text-align: right;">Page 106</p> <p>1 Q. Is that your sworn testimony?</p> <p>2 A. Yes.</p> <p>3 Q. Was Mr. Kearney frauded? Did you lie to him in the</p> <p>4 proposal about what he was buying?</p> <p>5 A. No.</p> <p>6 Q. You didn't lie to him in the proposal about what he</p> <p>7 was buying, correct?</p> <p>8 A. I didn't lie to him. I didn't give him the proposal.</p> <p>9 Q. Did the company lie to Mr. Kearney in the proposal by</p> <p>10 saying if he purchased the policy, he'd get X and he</p> <p>11 didn't get X?</p> <p>12 A. No, there's no lie there. There's a matter of</p> <p>13 interpretation that's incorrect apparently.</p> <p>14 Q. Interpretation, thank you. You indicated that Mr.</p> <p>15 Kearney's doctor suggested in the spring of '94 that</p> <p>16 he could return to work, right?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. That was because he had a back problem. The</p> <p>19 back problem wasn't preventing his return to work.</p> <p>20 You heard that from his orthopedic doctor, correct?</p> <p>21 A. I don't remember what doctor it was. It shows on that</p> <p>22 claim form.</p> <p>23 Q. Was it a psychologist that told you --</p> <p>24 A. I don't recall who it was.</p> <p>25 Q. Okay. Thank you.</p>	<p style="text-align: right;">Page 108</p> <p>1 dated August 11, 2000, on Disability Management</p> <p>2 Services letterhead. Could you read -- the first</p> <p>3 paragraph is just a single line. Could you read the</p> <p>4 second paragraph for me out loud.</p> <p>5 MR. ELLIS: Objection. He's never seen this</p> <p>6 before.</p> <p>7 MR. ROBERTS: He has now. He didn't see the</p> <p>8 documents that he testified about today until last</p> <p>9 night when you showed him. I can't show him a</p> <p>10 document and have him testify, Big Brother?</p> <p>11 MR. ELLIS: I'll stipulate he can read.</p> <p>12 Q. Can you read the second paragraph into the record.</p> <p>13 MR. ELLIS: I'll stipulate that he can.</p> <p>14 MR. ROBERTS: That's funny. You're a</p> <p>15 humorous guy.</p> <p>16 A. "Under separate cover you should receive two checks</p> <p>17 reflecting the increase under the cost of living</p> <p>18 adjustment, COLA, rider for both of your policies that</p> <p>19 became effective on May 6, 2000. I apologize for this</p> <p>20 oversight."</p> <p>21 Q. So someone else reviewing the policy and the contract</p> <p>22 for several years actually apologized to Mr. Kearney</p> <p>23 because they believed reading the contract that he was</p> <p>24 entitled to COLA and Social Security?</p> <p>25 MR. ELLIS: Objection, no foundation.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. It's on the claim form, though. It was dated March 31</p> <p>2 and the doctor said he could go back to work April 1</p> <p>3 on that claim form he submitted.</p> <p>4 Q. The doctor said he could return to work because his</p> <p>5 lumbosacral problem for which he had a laminectomy</p> <p>6 surgery was okay, right?</p> <p>7 A. Whatever his claim was at that time for his</p> <p>8 disability, he said yes, he could go back to work.</p> <p>9 Q. Thank you. Do you know anything about DMS?</p> <p>10 A. No.</p> <p>11 Q. Can I have those exhibits, sir.</p> <p>12 A. (Indicating)</p> <p>13 Q. Are you mindful that they made a mistake when they</p> <p>14 were administering the policy from '97 through 2001 or</p> <p>15 2002, making the same mistake you made?</p> <p>16 A. I understand they did.</p> <p>17 Q. Okay. Do you understand that they're professionals in</p> <p>18 disability claim management?</p> <p>19 A. I have no understanding about them at all.</p> <p>20 Q. Okay. Does it make you feel better about your mistake</p> <p>21 that someone else made the same mistake for four</p> <p>22 years?</p> <p>23 A. Oh, I don't think you can feel good about making a</p> <p>24 mistake.</p> <p>25 Q. Okay. I'll show you Exhibit 10. This is a letter</p>	<p style="text-align: right;">Page 109</p> <p>1 A. I don't know what their basis for determination was.</p> <p>2 Q. Okay. Does it make you feel better about your 300</p> <p>3 mistakes?</p> <p>4 A. As I said before, I don't feel good about making a</p> <p>5 mistake.</p> <p>6 Q. Okay. Do you have --</p> <p>7 MR. ROBERTS: Can you put that in front of</p> <p>8 your client, Bill, since it's got the marks up on it,</p> <p>9 make it easier for him.</p> <p>10 MR. ELLIS: No, give him the original. I</p> <p>11 don't want you to have to complain that I made</p> <p>12 notations on my copy.</p> <p>13 MR. ROBERTS: I'm consenting to you giving</p> <p>14 him notes, so why don't you give him --</p> <p>15 MR. ELLIS: I don't want to give him one --</p> <p>16 MR. ROBERTS: Well, you're sitting right next</p> <p>17 to him, so you can do it, Bill. Are you that</p> <p>18 juvenile? Am I boring you as you yawn?</p> <p>19 MR. ELLIS: Uh-huh.</p> <p>20 MR. ROBERTS: Are you going to share that</p> <p>21 with your client so we can have a dialogue?</p> <p>22 MR. ELLIS: Give him your Exhibit 14. I'm</p> <p>23 going to work from one if you're going to question him</p> <p>24 on it.</p> <p>25 MR. ROBERTS: Oh, Billy, Big Brother.</p>

28 (Pages 106 to 109)

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John L. Roberson**

**C-1-02-479
5/7/2004**

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<p>1 Q. Exhibit 9, sir (Indicating). You testified under oath</p> <p>2 on your own personal knowledge that the comment that</p> <p>3 Mr. Ellis underlined in red on the copy he gave you on</p> <p>4 page 0962 -- whose handwriting is "We are pay TD</p> <p>5 benefits COLA applies"?</p> <p>6 A. I think I said it either appears to be Phyllis</p> <p>7 Harden's or Kim Brann's.</p> <p>8 Q. Okay. You don't know who wrote it, nor do you know</p> <p>9 what they actually meant in writing it, do you?</p> <p>10 A. Well, it's obvious what they mean.</p> <p>11 Q. No, it's not obvious.</p> <p>12 A. Yes, it is. It says --</p> <p>13 Q. Let me ask the question again.</p> <p>14 A. I was answering your question.</p> <p>15 Q. I didn't ask you a question. When a person is on</p> <p>16 residual disability and their loss is greater than</p> <p>17 75 percent, they get the full total disability</p> <p>18 benefit, right?</p> <p>19 A. They get the full monthly benefit, yes.</p> <p>20 Q. Which is the total disability benefit?</p> <p>21 A. Which is the same as the total disability benefit.</p> <p>22 Q. Exactly.</p> <p>23 A. The amount.</p> <p>24 Q. That's what that means. Thank you.</p> <p>25 A. I don't think that's what it means. It means that</p>	<p>1 Q. Which is which?</p> <p>2 A. On the right-hand corner or right-hand middle is</p> <p>3 Harold Shelton's, and the remainder of it except the</p> <p>4 2,750, 1,375 is Bob Maxwell's.</p> <p>5 Q. It's all Bob Maxwell except for the part that appears</p> <p>6 after the greater than sign on the right hand?</p> <p>7 A. Yes, plus the 1,375 that's on the other side of it.</p> <p>8 The 2,750 and 3,107.50 are also Harold Shelton's.</p> <p>9 Q. Could you write -- could you circle on the exhibit the</p> <p>10 handwriting that is not Bob Maxwell's.</p> <p>11 A. (Indicating)</p> <p>12 Q. For the record, you have circled in blue ink on that</p> <p>13 exhibit?</p> <p>14 A. That's correct.</p> <p>15 Q. Thank you. Bob Maxwell in his writing was trying to</p> <p>16 understand and calculate the monthly benefit properly</p> <p>17 payable to Mr. Kearney; is that right --</p> <p>18 A. That's what it appears, yes.</p> <p>19 Q. -- to Mr. Kearney's claim file.</p> <p>20 MR. ROBERTS: That's all. I have no further</p> <p>21 questions.</p> <p>22</p> <p>23 FURTHER EXAMINATION (by Mr. Ellis):</p> <p>24</p> <p>25 Q. I just have one. Counsel cut off your answer. When</p>
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<p>1 they --</p> <p>2 Q. You don't even know who authored it. How could you</p> <p>3 testify?</p> <p>4 A. I know one of two persons who do, and you can't tell</p> <p>5 it because you don't know either one of them.</p> <p>6 Q. Okay. You don't know who authored it?</p> <p>7 A. I know one of two persons who did.</p> <p>8 Q. You don't know who authored it, you don't know what</p> <p>9 they were thinking, whether they were talking about a</p> <p>10 residual disability but greater than 75 percent loss,</p> <p>11 yet you have the willingness at Bill Ellis's request</p> <p>12 to testify under oath based on personal knowledge what</p> <p>13 it means?</p> <p>14 MR. ELLIS: Objection to form.</p> <p>15 Q. Right? Correct?</p> <p>16 A. What do you mean, by his request?</p> <p>17 Q. Strike the question. Whose handwriting is on Bates</p> <p>18 2808?</p> <p>19 A. There again, it's either one of the two, either</p> <p>20 Phyllis or Kim.</p> <p>21 (Defendant's Exhibit No. 22 was marked for</p> <p>22 identification by Mr. Roberts.)</p> <p>23 Q. Whose handwriting is on Exhibit 22, which is Bates</p> <p>24 2693?</p> <p>25 A. Bob Maxwell's and Harold Shelton's.</p>	<p>1 you were discussing the loss greater than 75 percent</p> <p>2 in a residual disability claim, can you show me</p> <p>3 anywhere in the residual disability rider that</p> <p>4 suggests that that becomes then a total disability</p> <p>5 claim or entitlement to all of the total disability</p> <p>6 benefits?</p> <p>7 MR. ROBERTS: Objection.</p> <p>8 A. It does not say that he's entitled to total disability</p> <p>9 in any -- he's entitled to the monthly benefit in the</p> <p>10 schedule, the full monthly benefit.</p> <p>11 Q. Okay. Where is that contained, what you have just</p> <p>12 said, in the residual disability rider?</p> <p>13 A. Well, loss of monthly income means the difference</p> <p>14 between the prior monthly income and the current</p> <p>15 monthly income. Any loss of monthly income -- of more</p> <p>16 than 75 percent of the prior monthly benefit will be</p> <p>17 deemed to be 100 percent.</p> <p>18 Q. Okay. So he gets 100 percent --</p> <p>19 A. Of monthly benefit.</p> <p>20 Q. -- of the monthly benefit, and the monthly benefit is</p> <p>21 defined in the policy under the schedules as what</p> <p>22 (Indicating)?</p> <p>23 MR. ROBERTS: Are you going to point out</p> <p>24 everything you want him to read in answer to your</p> <p>25 question? Why don't you just give him the exhibit and</p>

29 (Pages 110 to 113)

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<p style="text-align: right;">Page 114</p> <p>1 let him do it on his own rather than sticking your</p> <p>2 index finger where you want him to read.</p> <p>3 Q. Just tell me what the monthly benefit is.</p> <p>4 A. In the schedule it says Monthly Benefit, then it gives</p> <p>5 the amount.</p> <p>6 MR. ELLIS: Okay. That's all I have.</p> <p>7 MR. ROBERTS: Thank you, Mr. Shelton -- Mr.</p> <p>8 Roberson, I'm sorry.</p> <p>9 (Deposition concluded at 12:15 p.m.)</p> <p>10</p> <p>11 _____</p> <p>12 Signature of the Witness</p> <p>13</p> <p>14 SUBSCRIBED and SWORN TO before me this _____ day of</p> <p>15 _____, 2004.</p> <p>16</p> <p>17 _____</p> <p>18 NOTARY PUBLIC</p> <p>19 My Commission expires: _____</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 116</p> <p>1 Page ____ Line ____ should read:</p> <p>2 _____</p> <p>3 Reason for change _____</p> <p>4 Page ____ Line ____ should read:</p> <p>5 _____</p> <p>6 Reason for change _____</p> <p>7 Page ____ Line ____ should read:</p> <p>8 _____</p> <p>9 Reason for change _____</p> <p>10 Page ____ Line ____ should read:</p> <p>11 _____</p> <p>12 Reason for change _____</p> <p>13 Page ____ Line ____ should read:</p> <p>14 _____</p> <p>15 Reason for change _____</p> <p>16 Page ____ Line ____ should read:</p> <p>17 _____</p> <p>18 Reason for change _____</p> <p>19 Page ____ Line ____ should read:</p> <p>20 _____</p> <p>21 Reason for change _____</p> <p>22 Page ____ Line ____ should read:</p> <p>23 _____</p> <p>24 Reason for change _____</p> <p>25 _____</p>
<p style="text-align: right;">Page 115</p> <p>1 ERRATA SHEET</p> <p>2 RE: Jefferson-Pilot v. Kearney</p> <p>3 DEPOSITION OF: John L. Roberson</p> <p>4 Please read this original deposition with</p> <p>5 care, and if you find any corrections or changes you</p> <p>6 wish made, list them by page and line number below.</p> <p>7 DO NOT WRITE IN THE DEPOSITION ITSELF. Return the</p> <p>8 deposition to this office after it is signed. We</p> <p>9 would appreciate your prompt attention to this matter.</p> <p>10 To assist you in making any such</p> <p>11 corrections, please use the form below. If</p> <p>12 supplemental or additional pages are necessary, please</p> <p>13 furnish same and attach them to this errata sheet.</p> <p>14 Page ____ Line ____ should read:</p> <p>15 _____</p> <p>16 Reason for change _____</p> <p>17 Page ____ Line ____ should read:</p> <p>18 _____</p> <p>19 Reason for change _____</p> <p>20 Page ____ Line ____ should read:</p> <p>21 _____</p> <p>22 Reason for change _____</p> <p>23 Page ____ Line ____ should read:</p> <p>24 _____</p> <p>25 Reason for change _____</p>	<p style="text-align: right;">Page 117</p> <p>1 STATE OF NORTH CAROLINA)</p> <p>2) CERTIFICATE</p> <p>3 COUNTY OF GUILFORD)</p> <p>4</p> <p>5 I, REBECCA J. HUDDY, Notary Public, do hereby</p> <p>6 certify that JOHN L. ROBERSON was duly sworn by me</p> <p>7 prior to the taking of his deposition; that said</p> <p>8 deposition was taken and transcribed by me; and that</p> <p>9 the foregoing one hundred sixteen (116) pages are a</p> <p>10 true and accurate transcript of the testimony of said</p> <p>11 JOHN L. ROBERSON.</p> <p>12 I further certify that I am not of counsel</p> <p>13 for or in the employment of any of the parties to this</p> <p>14 action, nor am I interested in the result of said</p> <p>15 action.</p> <p>16 IN WITNESS WHEREOF, I have hereunto</p> <p>17 subscribed my name this 10th day of May, 2004.</p> <p>18</p> <p>19</p> <p>20 _____</p> <p>21 REBECCA J. HUDDY</p> <p>22 Notary Public</p> <p>23 My Commission Expires July 26, 2005</p> <p>24</p> <p>25</p>

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RE: Jefferson-Pilot v. Kearney

DEPOSITION OF: John L. Roberson

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